MONTANA LEGISLATIVE HISTORY

Chapter 332 2009

Bill H 228 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1-22	✓ C	Hearing Date(s)	3-17	✓ C
	1-30	✓ C		3-30	✓ C
		C			C
		C			C
Date Out	1-30	C		3-30	

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Conference Committee 4-7-09

4/18	3RD READING PASSED AS AMENDED BY SENATE	71	26
4/18	SENT TO ENROLLING		
4/18	REVISED FISCAL NOTE SIGNED		
4/18	REVISED FISCAL NOTE PRINTED		
4/20	RETURNED FROM ENROLLING		
4/21	SIGNED BY SPEAKER		
4/21	SIGNED BY PRESIDENT		
4/22	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR		
4/29	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 379		
	EFFECTIVE DATE: 7/01/2009 - ALL SECTIONS		

HB 225 INTRODUCED BY HUNTER *LC0717 DRAFTER: HEFFELFINGER*

INCLUDE DEPUTY SHERIFFS IN POLICE ARBITRATION ACT

11/06	FISCAL NOTE PROBABLE		
1/09	INTRODUCED		
1/09	REFERRED TO BUSINESS AND LABOR		
1/16	HEARING		
2/19	TABLED IN COMMITTEE		
2/26	MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL		
	DIED IN STANDING COMMITTEE		

HB 226 INTRODUCED BY ARNTZEN *LC1188 DRAFTER: NISS*

GRANT FOR AT-RISK YOUTH AFTER SCHOOL PROGRAMS

1/09	INTRODUCED		
1/09	REFERRED TO APPROPRIATIONS		
1/20	HEARING		
3/26	MISSED DEADLINE FOR APPROPRIATION BILL TRANSMITTAL		
	DIED IN STANDING COMMITTEE		

HB 227 INTRODUCED BY MCNUTT *LC1643 DRAFTER: LANE*

OFFSET OF PERSONAL CONSUMPTION EXPENSES IN SURVIVAL ACTIONS

1/09	INTRODUCED		
1/09	REFERRED TO JUDICIARY		
2/12	HEARING		
2/14	TABLED IN COMMITTEE		
2/26	MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL		
	DIED IN STANDING COMMITTEE		

HB 228 INTRODUCED BY KERNS *LC0672 DRAFTER: NISS*

CITIZEN SELF-DEFENSE AND FIREARM RIGHTS

1/09	INTRODUCED		
1/09	REFERRED TO JUDICIARY		
1/22	HEARING		
1/30	COMMITTEE EXEC ACTION—BILL PASSED AS AMENDED	10	8
1/30	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/09	2ND READING PASSED AS AMENDED	58	42
2/10	3RD READING PASSED	60	40
	TRANSMITTED TO SENATE		
2/23	REFERRED TO JUDICIARY		
3/17	HEARING		
3/30	COMMITTEE EXEC ACTION—CONCURRED AS AMD	8	4
3/30	COMMITTEE REPORT—CONCURRED AS AMD		
3/31	2ND READING CONCURRED	40	10
4/01	3RD READING CONCURRED	40	10
	RETURNED TO HOUSE WITH AMENDMENTS		
4/03	2ND READING SENATE AMDS NOT CONCURRED	73	27
4/03	CONFERENCE COMMITTEE APPOINTED		
4/06	CONFERENCE COMMITTEE APPOINTED		
4/07	HEARING		
4/07	CONFERENCE COMMITTEE REPORT RECEIVED		
4/07	CONFERENCE COMMITTEE REPORT RECEIVED		
4/08	2ND READING CONFERENCE COMMITTEE REPORT ADOPTED	80	20
4/08	2ND READING CONFERENCE COMMITTEE REPORT ADOPTED ON VOICE VOTE	40	10
4/09	3RD READING CONFERENCE COMMITTEE REPORT ADOPTED	85	14

4/09	3RD READING CONFERENCE COMMITTEE REPORT ADOPTED	40	10
4/09	SENT TO ENROLLING		
4/14	RETURNED FROM ENROLLING		
4/15	SIGNED BY SPEAKER		
4/16	SIGNED BY PRESIDENT		
4/17	TRANSMITTED TO GOVERNOR		
4/27	SIGNED BY GOVERNOR		
4/27	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 332		
	EFFECTIVE DATE: 4/27/2009 - ALL SECTIONS		

HB 229 INTRODUCED BY MACLAREN *LC1185 DRAFTER: GERSOVITZ*

FUND ST. MARY'S PRESERVATION

1/09	INTRODUCED		
1/09	REFERRED TO APPROPRIATIONS		
1/14	HEARING		
1/15	HEARING		
3/26	MISSED DEADLINE FOR APPROPRIATION BILL TRANSMITTAL		
	DIED IN STANDING COMMITTEE		

HB 230 INTRODUCED BY MCCLAFFERTY *LC0935 DRAFTER: HEISEL*

REVISE LOCAL GOVERNMENT EMPLOYEE INCENTIVE PROGRAM

1/12	INTRODUCED		
1/12	REFERRED TO LOCAL GOVERNMENT		
1/29	HEARING		
2/06	COMMITTEE EXEC ACTION—BILL PASSED AS AMENDED	14	4
2/06	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED	76	23
2/14	3RD READING PASSED	70	30
	TRANSMITTED TO SENATE		
2/23	REFERRED TO LOCAL GOVERNMENT		
3/16	HEARING		
3/17	COMMITTEE EXEC ACTION—BILL CONCURRED	9	0
3/17	COMMITTEE REPORT—BILL CONCURRED		
3/20	2ND READING CONCURRED ON VOICE VOTE	47	2
3/21	3RD READING CONCURRED	43	4
	RETURNED TO HOUSE		
3/23	SENT TO ENROLLING		
3/24	RETURNED FROM ENROLLING		
3/24	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
4/01	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 122		
	EFFECTIVE DATE: 4/01/2009 - ALL SECTIONS		

HB 231 INTRODUCED BY GLASER *LC1063 DRAFTER: HEISEL*

REVISE LAWS ON INCORPORATION OF CITIES AND TOWNS

1/02	HEARING		
1/12	INTRODUCED		
1/12	REFERRED TO LOCAL GOVERNMENT		
1/22	HEARING		
1/23	COMMITTEE EXEC ACTION—BILL PASSED	18	0
1/23	COMMITTEE REPORT—BILL PASSED		
1/24	2ND READING PASSED	100	0
1/26	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
2/23	REFERRED TO LOCAL GOVERNMENT		
3/04	HEARING		
4/07	TABLED IN COMMITTEE		
	DIED IN STANDING COMMITTEE		

HB 232 INTRODUCED BY FRENCH *LC1050 DRAFTER: PETESCH*

REMOVE LIMITS ON PAYMENTS IN LIEU OF TAXES FOR STATE LAND IN COUNTIES

11/21 FISCAL NOTE PROBABLE

BILL NO. 228

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PRESERVING AND CLARIFYING LAWS RELATING TO THE RIGHT OF SELF-DEFENSE AND THE RIGHT TO BEAR ARMS; AMENDING SECTIONS 45-8-315, 45-8-316, AND 46-6-502, MCA; AND REPEALING SECTION 45-8-317, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** The legislature declares that:

(1) the right of Montanans to defend their lives and liberties, as provided in Article II, section 3, of the Montana constitution, and their right to keep or bear arms in defense of their homes, persons, and property, as provided in Article II, section 12, of the Montana constitution, is fundamental and may not be called into question;

(2) the use of firearms for self-defense is recognized within the right reserved to the individual people of Montana in Article II, section 12, of the Montana constitution;

(3) self-defense is a natural right under 1-2-104 and is included in 49-1-101 and 49-1-103;

(4) the lawful use of firearms for self-defense is not a crime or an offense against the people of the state;

(5) if self-defense is asserted by a defendant in a criminal action, the state has the burden to prove the absence of justification beyond a reasonable doubt;

(6) the use of firearms for self-defense discourages violent crime and prevents victimization; and

(7) the purpose of [sections 1 through 5] is to clarify and secure the ability of the people to protect themselves from wrongful assault.

NEW SECTION. **Section 2. No duty to summon help or flee.** Except as provided in 45-3-105, a person who is lawfully in a place or location and who is threatened with bodily injury or loss of life has no duty to retreat from a threat or summon law enforcement assistance prior to acting in self-defense.

NEW SECTION. **Section 3. Defensive display of firearm not offense.** (1) A person who displays or shows a firearm for a harmless defensive purpose needs no justification for the display and may not be charged with or convicted of an offense for that display.

INTRODUCED BILL
HB 228

(2) Displaying or showing a firearm includes but is not limited to:

(a) openly wearing, carrying, or possessing a firearm;

(b) verbally informing another that one possesses a firearm; and

(c) holding a firearm in a position so that the firearm does not point directly at another person.

(3) The right to show or display a firearm does not include the following situations, and justification is required for the display:

(a) intentionally or recklessly pointing a firearm directly at another person or sweeping another person with the muzzle of a firearm;

(b) intentionally discharging a firearm in the direction of another person; or

(c) deliberately provoking another person into threatening words or actions when possessing a firearm.

NEW SECTION. **Section 4. Investigation of alleged offense involving self-defense claim.** When an investigation is conducted by a peace officer of an incident that appears to have been or is alleged to have been in self-defense, the investigation must be conducted so as to disclose all evidence, including testimony, that might support the alleged offense and the apparent or alleged self-defense.

NEW SECTION. **Section 5. Award of attorney fees and costs -- charge dismissed -- person found not guilty.** In a criminal prosecution of a person who is accused of an offense and who asserts the right of self-defense under Article II, section 12, of the Montana constitution, if the charge is dismissed or the person is found not guilty, the court shall award the person reasonable attorney fees and costs specific to the defense of the charge.

NEW SECTION. **Section 6. Conditions for seizure of firearm -- return of seized firearm.** (1) Unless a firearm is seized pursuant to 46-5-401, a peace officer may seize a legally possessed firearm only:

(a) at an incident in which a firearm is present and a peace officer on the scene has probable cause to believe that the firearm was used to commit a crime. However, the peace officer may take only that firearm and no other into temporary custody, for up to 2 hours, to secure the safety of persons at the scene. If an arrest is not made, the firearm must be returned to the person from whom it was seized or to the rightful owner if that is determined to be another person no later than the end of the 2-hour custody period, unless a court order is obtained to retain the firearm.

(b) if a person is arrested because of probable cause to believe that the person has committed a crime and it is alleged with probable cause that the firearm has been used to further that crime. The firearm must be returned to the person from whom it was seized or to the rightful owner, if that is determined to be a different person, unless a court order is obtained to retain the firearm, within 2 weeks of the seizure if a criminal charge has not been filed against the person from whom the firearm was seized.

(2) If a criminal charge against a person from whom a firearm has been seized is dismissed or the person is found not guilty, the firearm must be returned to the person or to the rightful owner if that is determined to be a different person within 48 hours of the dismissal or of a verdict of not guilty if no other charges directly relating to the firearm are pending.

(3) A person from whom a firearm is seized or kept in a manner that is not consistent with this section may compel the return of the firearm by demanding the return in writing, without regard to the form of the writing, delivered to a representative of the law enforcement agency that initially seized the firearm. The demand must be honored within 24 hours. This process does not require an order of any court to be effective. If the firearm is not returned, the person may seek an immediate writ of mandamus from the district court judge or justice of the peace to compel the return. The person may also seek judicial sanctions and reasonable attorney fees if the person prevails against a law enforcement agency that has failed to comply with the initial demand for return. A person who may not legally possess any firearm or the type of firearm seized is not authorized to demand the return of a firearm under this subsection.

(4) A peace officer or law enforcement agency in possession of a firearm under this section shall exercise due care to prevent loss of or damage to the firearm and may be held liable for any loss or damage.

(5) If a peace officer or law enforcement agency seizes a firearm under this section, the person from whom the firearm was seized must be given a receipt for the firearm by the officer who seized the firearm or by another officer from the seizing officer's agency. The receipt must contain enough specificity to identify the firearm and must be given by either of those officers before the seizing officer leaves the scene of the seizure.

NEW SECTION. **Section 7. Firearm not to be destroyed.** If a firearm possessed by a law enforcement agency was not purchased by the agency for agency use, if it is legal for a private person to own and possess the firearm, and if the legal owner cannot be determined by the agency, the agency may not destroy the firearm and shall sell the firearm to a licensed dealer. The proceeds of the sale must be deposited in the general fund of the governmental entity of which the agency is a part.

NEW SECTION. **Section 8. Landlords and tenants -- no firearm prohibition allowed.** A landlord or operator of a hotel or motel may not, by contract or otherwise, prevent a tenant or a guest of a tenant from possessing on the premises a firearm that it is legal for the tenant or guest to possess. A landlord or operator of a hotel or motel may prohibit the discharge of a firearm on the premises except in self-defense.

NEW SECTION. **Section 9. Employer prohibition of means of self-defense.** (1) An employer who as a condition of employment prohibits an employee from possessing the means of defending the employee in the workplace, including the possession of firearms, shall provide a level of security and safety for the employee equal to that which the employee could have provided without the prohibition. An employer who violates this requirement is liable for injury to the employee caused by a criminal act against the employee at the workplace if the injury would not have occurred but for the employer's prohibition. This subsection does not apply to an employee of the government of the United States or of a school district of this state.

(2) An employer may not prohibit an employee from keeping a firearm in a vehicle owned by the employee and parked at the workplace.

Section 10. Section 45-8-315, MCA, is amended to read:

"45-8-315. Definition. "Concealed weapon" means any weapon mentioned in 45-8-316, through 45-8-318, and 45-8-321 through 45-8-328 that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon, except that for purposes of 45-8-321 through 45-8-328, concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon."

Section 11. Section 45-8-316, MCA, is amended to read:

"45-8-316. Carrying concealed weapons. (1) ~~Every~~ A person who carries or bears concealed upon ~~his~~ the person, if using it to commit a criminal offense, a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A person who has previously been convicted of an offense, committed on a different occasion than

the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon ~~his~~ the person, if using it to commit a criminal offense, any of the weapons described in subsection (1) shall be punished by a fine not exceeding $1,000 or imprisoned in the state prison for a period not exceeding 5 years, or both."

Section 12. Section 46-6-502, MCA, is amended to read:

"46-6-502. Arrest by private person. (1) A private person may arrest another when there is probable cause to believe that the person is committing or has committed an offense and the existing circumstances require the person's immediate arrest. The private person may use reasonable force to detain the arrested person. Force likely to cause death or serious bodily harm may be used only under the conditions specified in 45-3-101 through 45-3-106.

(2) A private person making an arrest shall immediately notify the nearest available law enforcement agency or peace officer and give custody of the person arrested to the officer or agency."

NEW SECTION. **Section 13. Repealer.** Section 45-8-317, MCA, is repealed.

NEW SECTION. **Section 14. Codification instruction.** (1) [Sections 1 through 5] are intended to be codified as an integral part of Title 45, chapter 3, part 1, and the provisions of Title 45, chapter 3, part 1, apply to [sections 1 through 5].

(2) [Section 6] is intended to be codified as an integral part of Title 46, chapter 5, part 1, and the provisions of Title 46, chapter 5, part 1, apply to [section 6].

(3) [Section 7] is intended to be codified as an integral part of Title 46, chapter 5, part 3, and the provisions of Title 46, chapter 5, part 3, apply to [section 7].

(4) [Section 8] is intended to be codified as an integral part of Title 70, chapter 1, part 4, and the provisions of Title 70, chapter 1, part 4, apply to [section 8].

(5) [Section 9] is intended to be codified as an integral part of Title 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [section 9].

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chairman Ron Stoker, on January 22, 2009 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Ron Stoker, Chairman (R)
Rep. Deborah Kottel, Vice Chairman (D)
Rep. Gerald Bennett (R)
Rep. Anders Blewett (D)
Rep. Robyn Driscoll (D)
Rep. David Howard (R)
Rep. Krayton Kerns (R)
Rep. Margaret MacDonald (D)
Rep. Edith (Edie) McClafferty (D)
Rep. Mike Menahan (D)
Rep. Michael More (R)
Rep. Keith Regier (R)
Rep. Diane Sands (D)
Rep. Bob Wagner (R)
Rep. Wendy Warburton (R)

Members Excused: None.

Members Absent: Rep. Ken Peterson, Vice Chairman (R), Rep. Bob Ebinger (D), Rep. Arlene Becker (D)

Staff Present: Jennifer Eck, Committee Secretary
David Niss, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing: HB 246 and HB 228
Executive Action: None

00:24:28 Chairman Stoker
00:24:33 Rep. Howard
00:24:47 Chairman Stoker
00:24:49 Rep. Howard
00:24:51 Mr. Dziekonski
00:25:07 Rep. Howard
00:25:24 Rep. Blewett
00:25:57 Mr. Marbut
00:26:35 Chairman Stoker
00:26:43 Rep. Blewett
00:27:01 Mr. Marbut
00:27:49 Rep. Blewett
00:27:59 Mr. Marbut
00:28:11 Chairman Stoker
00:28:14 Rep. Kottel
00:28:30 Mr. Marbut
00:28:32 Rep. Kottel
00:29:37 Mr. Marbut
00:30:24 Rep. Kottel
00:31:08 Mr. Marbut
00:31:34 Chairman Stoker
00:31:39 Rep. More
00:32:08 Mr. Marbut
00:32:51 Rep. More
00:32:58 Chairman Stoker
00:33:00 Rep. Blewett
00:33:17 Mr. Marbut
00:33:50 Rep. Blewett
00:34:15 Mr. Marbut
00:34:58 Chairman Stoker

Closing by Sponsor:

00:35:20 Rep. Boniek

00:36:57 Chairman Stoker

HEARING ON HB 228

Opening Statement by Sponsor:

00:37:26 Rep. Krayton Kerns (R), HD 58, opened the hearing on HB 228, Citizen self-defense and firearm rights.

EXHIBIT(juh15a02)
EXHIBIT(juh15a03)

00:53:32 Rep. Ebinger joined meeting.
00:53:44 Chairman Stoker
00:53:50 Rep. Kerns
00:53:56 Chairman Stoker

Proponents' Testimony:

00:55:11 Gary Marbut, Montana Shooting Sports Association
01:02:00 Chairman Stoker
01:02:04 Garrett Bacon, East Helena, Montana
01:02:20 Chairman Stoker
01:02:25 Mike Craddock, Students for Concealed Carry on Campus
01:03:49 Chairman Stoker
01:03:55 Brian Judy, National Rifle Association
EXHIBIT(juh15a04)

01:15:26 Chairman Stoker
01:16:05 Lee Bruner, Silver Bow County, Montana
01:17:44 Chairman Stoker
01:17:48 Kim Milburn, Montana City, Montana
01:19:12 Chairman Stoker
01:19:17 Wayne Delzer, Canyon Creek, Montana
01:21:10 Chairman Stoker
01:21:14 Bruce Charles, Mineral County
01:23:33 Chairman Stoker
01:23:35 Dale Fricke, Bozeman
01:27:11 Chairman Stoker
01:27:17 David Anderson, Chairman of Yellowstone County Constitution Party

[Rep. Sands exits meeting.]

01:29:32 Chairman Stoker
01:29:41 Lloyd Phillips, Missoula
01:31:16 Chairman Stoker
01:31:20 Lincoln Dziekonski, federally-licensed firearms dealer
01:32:55 Chairman Stoker
01:33:03 Paul Stramer, Eureka, Montana
01:37:53 Chairman Stoker
01:38:18 Steve Hauk, Garrison, Montana
01:42:09 Chairman Stoker
01:42:13 Don Doig, Manhattan, Montana
01:42:54 Chairman Stoker
01:43:00 Franklin Shook, Jefferson River Coalition
01:43:32 Chairman Stoker
01:43:36 John Bennion, Montana Chamber of Commerce
01:44:02 Chairman Stoker
01:44:05 Dave Galt, Executive Director of Montana Petroleum Association
01:44:37 Riley Johnson, National Federation of Independent Business
01:44:55 Alfredo Romero
01:45:26 Chairman Stoker
01:45:27 Randy Pinocci, Sun River, Montana
01:46:33 Chairman Stoker

Opponents' Testimony:

01:47:19 Jim Smith, Montana Sheriffs and Peace Officers Association and County Attorneys Association
01:54:20 Chairman Stoker
01:54:26 Dennis Paxinos, Yellowstone County Attorney
02:08:18 Rep. Kottel
02:08:23 Chairman Stoker
02:08:30 Mr. Paxinos
02:08:48 Chairman Stoker
02:08:50 Mr. Paxinos
EXHIBIT(juh15a05)
EXHIBIT(juh15a06)

02:16:41 Chairman Stoker
02:18:15 Pam Bucy
02:18:45 Rep. Kottel
02:18:49 Ms. Bucy
02:18:53 Chairman Stoker
02:18:56 Ms. Bucy
02:19:08 Chairman Stoker

Proponents' Testimony:

02:19:26 Mike Manion, Chief Legal Counsel, Department of Administration (DOA)
02:19:54 Chairman Stoker
02:20:01 Mr. Manion

Opponents' Testimony:

02:20:47 Sheriff Jim Cashell, Sheriff of Gallatin County
02:29:14 Chairman Stoker
02:29:48 Vern Burdick, Sheriff of Chouteau County
02:31:00 Chairman Stoker
02:31:12 Jesse Slaughter, Great Falls Police Department
02:34:58 Chairman Stoker
02:35:09 Jamee Greer, Montana Human Rights Network
02:36:16 Chairman Stoker
02:36:23 Mark Muir, Chief of Police, City of Missoula

Informational Testimony:

02:36:55 Chairman Stoker
02:37:04 Chief Muir
02:40:11 Chairman Stoker
02:40:16 Chief Muir
02:43:06 Chairman Stoker

Questions from Committee Members and Responses:

02:43:52 Rep. Kottel
02:45:10 Chairman Stoker
02:45:14 Rep. MacDonald
02:46:45 Officer Slaughter
02:47:19 Chairman Stoker
02:47:23 Rep. Wagner
02:47:36 Chairman Stoker
02:47:44 Sheriff Cashell
02:47:46 Rep. Wagner
02:48:16 Sheriff Cashell
02:48:28 Rep. Wagner
02:48:30 Chairman Stoker
02:48:34 Rep. Menahan
02:49:36 Mr. Marbut
02:49:42 Rep. Menahan
02:49:55 Chairman Stoker
02:49:57 Rep. Menahan
02:50:02 Mr. Marbut
02:50:07 Rep. Menahan
02:51:33 Mr. Marbut
02:52:36 Chairman Stoker
02:52:40 Rep. Wagner
02:53:46 Mr. Paxinos
02:54:47 Rep. Wagner
02:54:48 Chairman Stoker
02:54:49 Rep. Wagner
02:55:14 Mr. Paxinos
02:55:26 Rep. Wagner
02:55:28 Chairman Stoker
02:55:31 Rep. Blewett
02:56:38 Mr. Paxinos
02:57:53 Chairman Stoker
02:57:56 Rep. Peterson
02:58:22 Mr. Paxinos
02:58:48 Rep. Peterson
02:58:50 Chairman Stoker
02:59:00 Rep. Wagner
02:59:02 Chairman Stoker
02:59:04 Rep. Wagner
02:59:35 Mr. Paxinos
03:00:05 Rep. Wagner
03:00:56 Mr. Paxinos
03:01:24 Rep. Wagner
03:01:26 Chairman Stoker
03:01:27 Rep. Kottel
03:02:27 Mr. Marbut
03:02:55 Rep. Kottel
03:04:37 Mr. Marbut
03:05:03 Chairman Stoker

Closing by Sponsor:

03:05:11 Rep. Kerns

03:05:18 Chairman Stoker

ADJOURNMENT

03:05:34 Adjournment

JENNIFER ECK, Secretary

je

Additional Documents:

EXHIBIT(juh15a07)
EXHIBIT(juh15a08)

Additional Documents:

EXHIBIT(juh15aad.pdf)

EXHIBIT 2
DATE 1/22/09
HB 228

Amendments to House Bill No. 228
1st Reading Copy

Requested by Representative Krayton Kerns

For the House Judiciary Committee

Prepared by David Niss
January 21, 2009 (4:22pm)

1. Page 2, line 23 through page 3, line 24.
Strike: section 6 in its entirety
Renumber: subsequent sections

2. Page 4, lines 7 through 15.
Strike: section 9 in its entirety
Renumber: subsequent sections

3. Page 5, lines 20 and 21.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections

4. Page 5, line 22.
Strike: "7"
Insert: "6"

5. Page 5, line 23.
Strike: "7"
Insert: "6"

6. Page 5, line 24.
Strike: "8"
Insert: "7"

7. Page 5, line 25.
Strike: "8"
Insert: "7"

8. Page 5, lines 26 and 27.
Strike: subsection (5) in its entirety

EXHIBIT 3
DATE 1/22/09
HB 228

(Downloadable MSWord version of this page HERE.)

Montana Shooting Sports Association

2009 Self Defense Bill

Explanation of sections
Why each is needed, what each does

by

Gary Marbut

Qualifications to comment: Gary Marbut is the author of the book Gun Laws of Montana, now the accepted standard on this subject in Montana, with nearly 10,000 copies in circulation. Gary is accepted in state and federal courts as an expert witness concerning use of force, firearm use for self-defense and related topics. Gary is a certified and veteran firearms instructor, having graduated nearly 2,000 students from classes teaching the safe and allowable use of firearms for self defense. Gary is a member of the International Association of Law Enforcement Firearms Instructors, having trained military, law enforcement, security and civilian personnel in firearm use. Gary is the long-time president of and chief lobbyist for the Montana Shooting Sports Association, the primary political action organization for gun owners and hunters in Montana. MSSA has achieved 50 pro-gun and pro-hunting measures passed by the Montana Legislature in the past 30 years. With input from many others, Gary is the primary compiler of this bill.

Location of bill: This explanation relates, section by section, to the current bill draft of MSSA's self defense bill as it is posted on the Legislature's Website at: http://data.opi.mt.gov/bills/2009/lchtml/LC0672.htm

Section 1.

This section is a general restatement and elaboration of the principles associated with the Right to Bear Arms at Article II, section 12 of the Montana Constitution, whereby the people of Montana have reserved to themselves the right of "any person" to use firearms for self defense.

Subsection five, (5) is important and needed to clarify law in Montana resulting from the

1999 *Longstreth* opinion by the Montana Supreme Court.
http://fnweb1.isd.doa.state.mt.us/idmws/docContent.dll?
Library=CISDOCSVR01^doaisd510&ID=003726618

If a person kills another while using a firearm for self defense, the person is considered to have committed a homicide - a crime. If prosecuted for that, the person is allowed to mount the affirmative defense of self-defense. However, under *Longstreth*, when mounting the affirmative defense of self-defense the burden of proof shifts to the defendant - that is, the person is presumed guilty until proven innocence. The jury instructions will be that the defendant must have proven justification for use of force in self-defense. This is in conflict with both American jurisprudence and with the exercise of a reserved constitutional right. (5) requires the prosecutors to prove that the defendant was NOT justified in using force for self defense to get a conviction.

Ten attorneys will offer ten different opinions about the actual effect of the *Longstreth* decision. That is exactly the problem! The law needs to be clarified on this issue in Montana. Prosecutors have argued in the past that *Longstreth* already requires what the bill states in (5). If that is so, why do prosecutors object to (5)?

Prosecutors have also argued that if they are required to prove absence of justification for use of force in self-defense, they will no longer be able to get convictions, although convictions are obtained in other states under this requirement. Of course, this argument is directly in conflict with prosecutor's claim that *Longstreth* already sets in law what (5) would put in statute. It's true that requiring prosecutors to prove guilt (lack of justification for use of force) will make their jobs more difficult than it currently is. It would be ever so much easier for prosecutors if they could just send people straight to prison without the awkward need for a trial to prove the accused guilty in court. But that's simply not our method of American jurisprudence, and not the system of justice the people choose. Section 1(5) will clarify the law and fix this problem in Montana.

Section 2.

No duty to summon help or flee. In many other jurisdictions, case law or statutes have evolved requiring that a person may not use force in self defense, but must try to summon law enforcement ("dial 911 and die") or flee from attack rather than meet criminal acts with force. This shift in policy usually happens by degree in small steps, often beginning with arguments to a jury that a victim *could* have called police or escaped before using force to prevent victimization. The "stand your ground" philosophy is more consistent with Montana culture. Since this is not currently specified in Montana law, Section 2 would clarify this void by declaring in statute that a person is not required to summon help or escape before using force for self defense.

Section 3.

Defensive display of firearm. Many other states have laws making it illegal to "brandish" a firearm, which implies waving or pointing a firearm in a wild or reckless manner. Montana has no such law. Yet people are being arrested or prosecuted in Montana for simply informing another person that they possess a firearm, usually for the felony crime of "intimidation." Section 3 draws a clear line that gun owners (and prosecutors) can understand between what conduct is not a crime at all (constitutionally-protected activity), and what conduct requires justification for use of lethal force under Title 45 of existing law. Where this line is drawn in Section 3 is derived from standard firearm safety doctrine, existing use of force law and common sense, in order to protect reserved constitutional rights, while allowing prosecution of people who commit unwarranted or dangerous acts with firearms.

For example, Section 3 requires that if a person puts another at risk of actual injury by pointing a firearm directly at another person or sweeping them with the muzzle of a firearm (standard firearm safety), this is NOT protected activity and requires justification for use of lethal force under Title 45 to be legal and safe from prosecution. However, if a person simply informs another that they possess a firearm, or shows another that they possess a firearm, this activity is protected as a reserved constitutional right and is no crime at all.

Because Montana law is currently silent on this subject and because people are currently being prosecuted for conduct within this legal void, Section 3 is very needed to clarify the law in Montana.

Section 4.

Investigation of alleged offense involving self-defense claim. The mission of police is to enforce the laws. That's exactly why they are called "law enforcement." Understandably, when they investigate the scene where self-defense is utilized, they are focused on determination of what laws may have been violated. Law enforcement personnel have a very understandable bias towards discovering and preserving evidence that supports the contention that laws have been violated - that's simply their mission. In such a situation, it is very possible that investigators will overlook or fail to secure evidence that may tend to support the claim that a defender has used force legally in self-defense. If the defender is charged with a crime, often weeks or months will have elapsed before investigators for the defendant are able to examine the scene for evidence that may support the defender's claim of self-defense. By then, such evidence is usually be gone.

Section 4 requires that investigators look for and collect all evidence, including evidence that could exonerate a person claiming self-defense. Investigators say that this need is already included in their professional standards for investigation. If that is so, they shouldn't object to this requirement being placed in statute, another clarification needed in existing

law. Further, citizens shouldn't be required to rely on changeable occupational standards drawn by un-elected organizations of public employees in order for citizens to stay out of prison.

Section 5.

Award of attorney fees and costs. Some prosecutors like to "throw the book" at people who defend themselves - to charge them with everything from jaywalking to treason. They pile on multiple charges knowing that many cannot be proven in court, but to so inflate the costs of the defendant's defense as to make legal defense totally unaffordable, forcing a defendant into a plea bargain and admission of guilt for a person who may not be guilty of doing anything wrong. It certainly makes life easier for any prosecutor if he can clear his desk of cases using plea bargains. No trial, work, jury or verdict are required. This leads some prosecutors to "charge heavy" to force the plea bargain and thus clear their desk of cases.

Section 5 levels the scales of justice to prevent an accused from being railroaded with heavy charging by allowing the accused to recover defense costs for any charges that are dismissed or for which the accused is exonerated. This should discourage prosecutors from filing charges they don't really have the facts to prove. This will also make it economically possible for the accused to mount a viable legal defense when a prosecutor tries to force a guilty plea with a plea bargain with heavy charging. Section 5 cures an existing problem with how Montana law is structured and applied.

Section 6.

Conditions for seizure of firearm -- return of seized firearm. When law enforcement personnel arrive at an incident where a firearm has been used in self-defense, it is understood that the law enforcement officer (LEO) must take control of the scene to assure the safety of the LEO and of other persons at the scene. This will often, but not always, require the officer to take possession of the firearm used in self-defense to secure the scene. This is especially true if the officer has probable cause to believe that a particular firearm was used to commit a criminal act.

However, law enforcement practice too often goes well beyond these necessary and acceptable actions. LEOs will often seize a firearm, ostensibly for generalized "safety" reasons, even though there is no probable cause to believe the firearm was used to commit a crime. Too often, multiple firearms are seized regardless of any contention that many were used in conjunction with any criminal activity. Once these firearms are seized, it may become very difficult, very expensive, or even impossible for the owner to regain possession of his or her property.

Section 6 clarifies all of this by establishing fixed timelines beyond which law enforcement may not retain firearms taken unless for good reason. And, Section 6 requires that a person be given a receipt for a firearm seized so the person will have proof and a record of what was taken, and so the firearms cannot mysteriously disappear in the process, something known to occasionally happen.

The exact hours and days specified in the bill are much less important than that times certain are expressed in law, that receipts must be given, that firearms must eventually be returned to a rightful and lawful owner without a forbiddingly expensive process, and that the persons or agency in temporary possession be held accountable for that possession and for any loss of or damage to firearms in their possession. This will clarify an area of Montana law that is now either vague or silent.

Section 7.

Firearm not to be destroyed. In some places in the U.S., firearms are routinely destroyed within 24 hours of acquisition by a law enforcement agency, if not needed as evidence in a prosecution, specifically to thwart firearm return to lawful owners. When queried about the practice by this writer (at an FBI National Academy Conference in Minneapolis), a patrol captain from Illinois asserted that this practice is because "Every gun destroyed is one less gun that will be used in a crime."

Section 7 prevents this egregious practice from gaining a foothold in Montana by requiring that law enforcement agencies may not be destroy firearms that are legal for people to possess. If firearms seized cannot be returned to the rightful owner, they must be sold to a licensed firearms dealer and the income from that sale must go into the public treasury. Selling any non-returnable firearms to a licensed dealer avoids any liability for the law enforcement agency for the safe working condition of the firearm. It also returns the firearms to the Montana marketplace for citizen ownership.

Section 8.

Landlords and tenants -- no firearm prohibition allowed. Although important, property rights are not absolute. When a person sells property, they give up their property rights. Many property rights are surrendered with a lease or rental as well, such as the owner's right to exclusive use of the leased property. For example, if a motel owner rents a motel room to a paying guest, the owner voluntarily gives up the right to sleep in the bed in the motel room rented, in fair exchange for the income received.

Once a person leases or rents a place to live, even if just overnight, that place becomes the renter's domicile - his castle. The renter enjoys certain property rights associated with the place becoming his domicile. Rights associated with a domicile become especially

important when they are constitutional rights. It would not be acceptable, for example, for a rental property owner to require a renter by contract to surrender his right to trial by jury while renting the property, to require a renter by contract to promise to vote only for candidates of one party or persuasion (or not vote at all), to require a renter by contract to never write a letter to the editor, to require a renter by contract to never allow a person of another race to visit the property, etc.

There have been several examples in Montana where people renting or leasing property for their domicile have been told that they may not possess firearms on the rented property. This potentially denies the renter the most fundamental right, the right to live, because it denies the renter or leaseholder the ability to conduct his own self defense or the defense of his family. It deprives the occupant of the domicile the right to defend his castle.

Section 8 does allow a landlord to prohibit firearm discharge on the leased or rented property, except in cases of self-defense. This section fills another critical void in Montana law.

Section 9.

Employer prohibition of means of self-defense. When an employer employs you, that employer has certain obligations to provide a safe workplace. That includes protecting an employee from predictable hazards. It is insufficient to post a sign at the main entrance to a workplace announcing, "No criminal predator is allowed to prey on company employees here - by company policy." That is an unrealistic approach, and an empty assurance of worker safety. It is similar to a theoretical company policy saying, "No structural fires are allowed on company property so no fire exits to the building are provided."

If a worker's job is in the wilds of Grizzly country, it would be nonsensical for an employer to adopt a work policy prohibiting employees from climbing trees or shouting for help if attacked by a Grizzly, a policy for which an employee in violation could be fired. It is equally nonsensical to allow the employer prohibit the same employee, as a part of the employment contract, from possessing a firearm to protect herself or himself from an attacking Grizzly, or a two-legged predator.

Section 9 holds that if an employer prohibits an employee from possessing the tools to defend herself or himself, the employer assumes an absolute responsibility for overtly defending the employee from a predator, four-legged or two-legged. The theoretical sign posted at the main entrance to the workplace mentioned above would not satisfy this requirement, nor would a pensioner in a uniform sitting at a reception desk at the entrance. The alternative is that the employee be allowed to provide for her or his own defense.

Section 10.

Section 10 is just a code clarification required by the Code Commissioner. It has no effect.

Section 11.

For the last 20 years Montana has tested a public policy of trusting citizens to behave well if allowed to carry concealed firearms for self-defense. That experiment has worked stunningly well. Since 1991 a concealed weapon permit has not been required for a person to legally carry a concealed firearm outside of the limits of a city or town (99.4% of Montana according to the Montana League of Cities and Towns). There are ZERO reported incidences of people abusing this privilege in the 99.4% of Montana it applies to in the past 20 years. The Legislature did the right thing in 1991 to trust its citizens to behave well.

It is now time to extend this proven privilege to trustworthy Montana citizens in the remaining 6/10ths of 1% of Montana, inside the limits of cities and towns.

Section 11 would leave existing process for applying for and issuing concealed weapon permits in place, so citizens could obtain them for out-of-state travel and for preapproved firearm purchases from licensed dealers under the federal Brady Law.

For others, Section 11 would change the law to make it not a crime to carry a concealed firearm in the remaining 6/10ths of 1% of Montana, without a permit, as long as the person is not using the firearm to commit a crime. Thus, the crime of carrying a concealed firearms would only apply to bad guys - people committing crimes, a proper focus for criminal law.

This change in Montana law has been opposed in the past by law enforcement administrators, but not by street-working officers. What Section 11 would accomplish is already the situation in nearly all of the jurisdiction covered by sheriffs departments in Montana, and they have found citizen firearm carry agreeable. So, the primary opposition has come from chiefs of police in the larger urban areas of Montana.

A retired FBI agent explained this opposition this way. Police administrators see everyone out after 11 PM as "up to no good" unless the person is delivering pizza or newspapers. They want their officers to have a tool to roust or intimidate those out late and not working. As long as a concealed weapon permit is required to carry a firearm, then working police officers can be instructed to stop and frisk any "up to no good" people for concealed weapons. This physical search is used to intimidate those perceived to be "up to no good." If a permit is no longer required inside city limits, police administrators would no longer have a tool to roust perceived undesirables. So, the real law enforcement application of the current law is to roust perceived undesirable people.

We say that if law enforcement needs a specialized tool to intimidate people perceived as "up to no good," let them come to the Legislature and ask the Legislature to craft a legal tool for that purpose. But don't lay this burden on law abiding gun owners - don't make it

difficult or illegal for the 99.9% of citizens who are law abiding to be able to provide for their personal security only to give police a tool to intimidate the elements they think are "up to no good."

When the change to a mandatory-issue concealed weapon permit process was first proposed for Montana in 1989, law enforcement administrators testified to the Legislature that this would result in shootouts on every street corner and blood in the streets. Despite this claim, the Legislature changed the law in 1991. The dire prediction by law enforcement of widespread bloodshed proved to be totally wrong and unwarranted. The modest change now proposed for Montana by Section 11 has long been the case in Vermont, and is currently the case in Alaska. This privilege in Vermont and Alaska has NOT resulted in any mayhem. Conversely, interpersonal crimes of violence are reduced everywhere citizens are trusted to provide for their own defense by carrying concealed firearms.

Section 12.

Arrest by private person. Currently Montana law allows a citizen to hold for law enforcement a person believed to have committed a crime. This is called a "citizen's arrest." However and curiously, Montana law does not authorize ANY use of force to restrain a person placed under citizen's arrest. If the person arrested wishes to just walk away, there's no legal way to detain them. If the citizen uses any force, the citizen could be prosecuted for assault or illegal restraint, or sued civilly.

Section 12 authorizes a person making a citizen's arrest to use reasonable force to detain the person arrested until law enforcement can arrive. It authorizes lethal force, such as a firearm, only under laws already in place for use of lethal force in Title 45. This cures another void in Montana law.

Section 13.

Section 13 repeals 45-8-317, MCA. Section 13 works in conjunction with Section 11, above. 45-8-317, MCA is an existing statute listing types of people who are exempt from the crime of carrying a concealed weapon, such as police officers, people with concealed weapon permits, and people outside the limits of a city or town, etc. Because non-criminal citizens would not be required to have permits to carry concealed firearms inside city limits (as is now the case outside city limits) if Section 11 is enacted, it will no longer be necessary to have a list of people in 45-8-317, MCA exempt from the law about illegal concealed carry.

End

EXHIBIT 4
DATE 1/22/09
HB 228

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VIRGINIA 22030
(703) 267-1202

STATE & LOCAL AFFAIRS DIVISION
RANDY KOZUCH, DIRECTOR

TO: Members of the House Judiciary Committee
FROM: Randy Kozuch, Director, NRA-ILA State & Local Affairs
DATE: January 21, 2009
RE: House Bill 228 (Self-defense/Right to Keep & Bear Arms) - **SUPPORT**

On behalf of the National Rifle Association and tens of thousands of NRA members in the state of Montana, I would like to register our strong support for House Bill 228. The right of self-defense is a fundamental right. Law-abiding citizens should be afforded every opportunity to defend themselves and their loved ones, without the fear that they will be treated like criminals if they exercise the right to self-defense.

House Bill 228 is a much needed piece of legislation that provides a number of specific protections for law-abiding citizens. House Bill 228 does the following:

- Clarifies the ability of law-abiding citizens to carry a firearm in plain view and to display the firearm for harmless defensive purposes
- Allows a person who can lawfully possess a firearm, and who doesn't use it to commit a criminal offense, to carry it concealed anywhere in the state without first obtaining governmental permission
- Prevents landlords and hotel operators from restricting law-abiding citizens' self-defense rights and requires employers who do restrict such rights to provide a comparable level of security and safety
- Clarifies in statute the existing legal precedent that there is no duty to retreat from a threat before exercising the right to self-defense, and allows a law-abiding citizen to use reasonable force in exercising the authority under existing laws
- Protects law-abiding citizens against seizure of their firearms absent an arrest, and ensures return of seized property if a person is exonerated
- Ensures that self-defense claims are adequately considered during incident investigations; and
- Shifts to the state, if self-defense is asserted by a defendant in a criminal case, the burden of proving an absence of justification, and provides reasonable attorney fees to a person who is accused of an offense and who is found to have acted in self-defense

The National Rifle Association strongly supports HB 228 and urges you to vote for it when it comes before your committee for consideration. If you have any additional questions regarding this legislation, please call Brian Judy, NRA's Montana State Liaison, at (916) 446-2455.

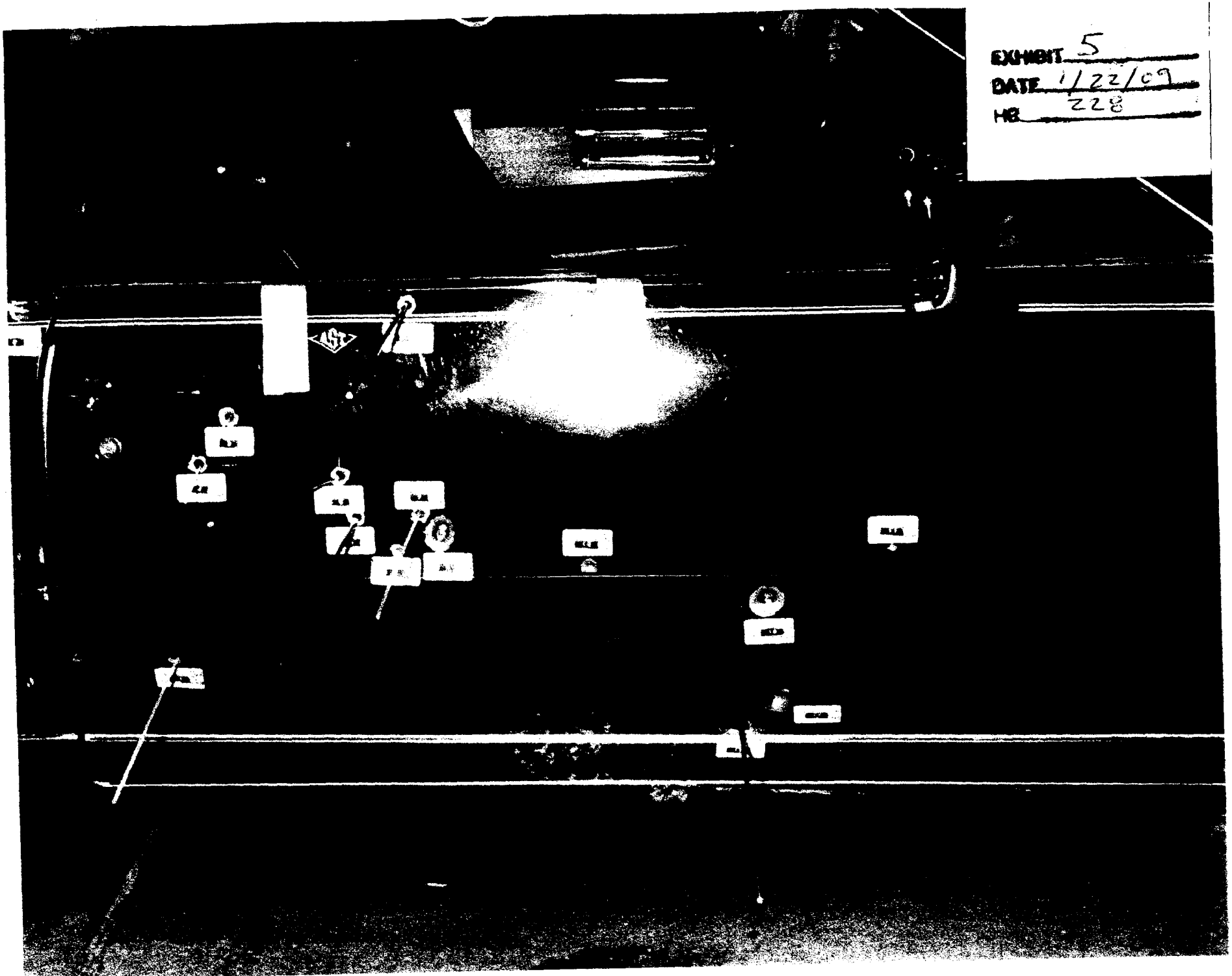

EXHIBIT 5
DATE 1/22/09
HB 228

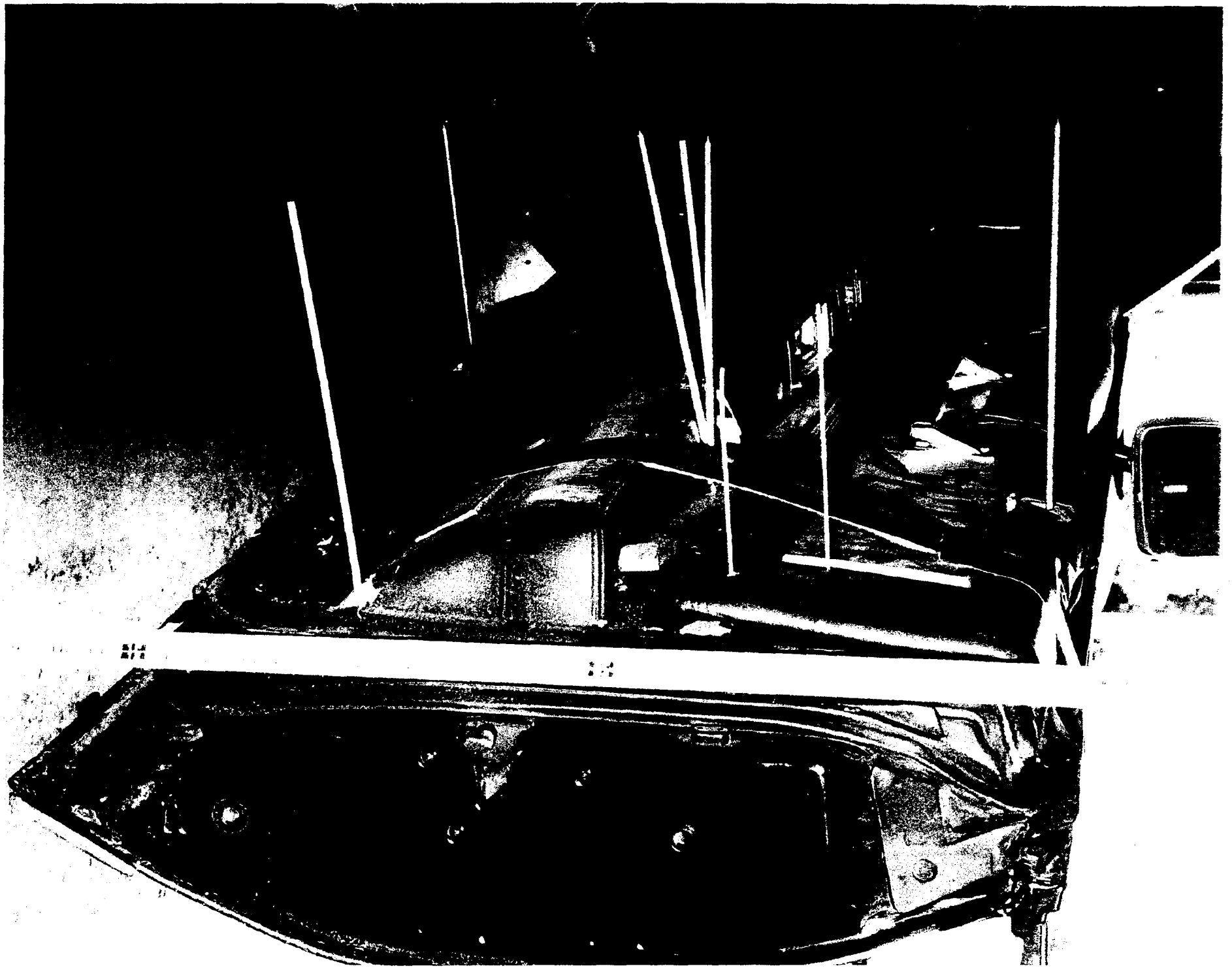

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EXHIBIT 6
DATE 1/22/09
HB 228

EXHIBIT 7
DATE 1/22/09
HB 228

VOLUME NO. 51 OPINION NO. 1

PUBLIC EMPLOYEES - Right to exercise political speech;
PUBLIC OFFICERS - Right to exercise political speech;
STATUTORY CONSTRUCTION - Construing plain meaning of words of statute;
MONTANA CODE ANNOTATED - Section 2-2-121, (3), (a), (b), (c).

HELD: A public officer or public employee may engage in political speech so long as his or her speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds.

January 31, 2005

Mr. Mathew J. Johnson
Jefferson County Attorney
P.O. Box H
Boulder, MT 59632

Dear Mr. Johnson:

You have requested my opinion on a number of questions concerning public officers and political speech. I have rephrased your questions as follows:

> Does Mont. Code Ann. § 2-2-121 limit a public officer's or employee's right to support or oppose a political candidate or passage of a ballot issue?

Mont. Code Ann. § 2-2-121 sets forth the rules of conduct for public officers and employees. Subsection (3) includes a prohibition against the use of public time and resources for political speech, as well as a provision protecting a public officer or employee's freedom to express personal political beliefs. It provides:

> (3)(a) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:
> (i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political beliefs.

(Emphasis added.)

It is not personal political speech that is prohibited by subsection (3)(a); rather, it is the use of public time or resources in the presentation or furtherance of political speech. While a public officer or employee is not required to shed his public persona in order to exercise his right to free speech, he may not use public resources when expressing personal political beliefs.

Your questions pose scenarios involving elected officers, like county commissioners and sheriffs, whose unique positions require them to work a schedule outside of the typical 8 to 5 schedule of most public employees. You ask, for instance, what of the county commissioner who receives phone calls at home in the evenings, or the sheriff who is on call 24 hours a day?

In Keyishian v. Board of Regents of Univ. of State of N.Y., 385 U.S. 589, 605-606 (1967), the Supreme Court stated, "a government employee does not relinquish all First Amendment rights otherwise enjoyed by citizens just by reason of his or her employment." Likewise, a county commissioner or sheriff (or any other public employees or officers) does not relinquish her First Amendment rights by the mere fact that she may be a public official. Pursuant to the plain language of Mont. Code Ann. § 2-2-121(3)(a), so long as a public officer or employee is not using "public time, facilities, equipment, supplies, personnel, or funds" she may engage in political speech. See Dahl v. Uninsured Employers' Fund, 1999 MT 168, ¶ 16, 295 Mont. 173, 983 P.2d 363.

Although "public time" is not defined, a reasonable construction would be those hours for which an employee receives payment from a public employer. Elected officials, of

course, do not have specific hours of employment nor do they receive vacation leave or other time off duty. They receive annual salaries rather than hourly wages. Thus, they could be considered to be on "public time" at all times. However, as long as public facilities, equipment, supplies, or funds are not involved, elected officials are not restricted in the exercise of political speech by the provisions of Montana law.

You also ask if subsection (3) prohibits a public employee or officer from signing a letter to the editor with his official title or prevents a law enforcement officer from wearing a uniform to campaign for a political issue or candidate. I conclude that, for the reasons stated above, subsection (3)(c) allows a public official to sign a letter to the editor, expressing personal political beliefs, with his official title, so long as public resources were not used to create the letter. Moreover, a sheriff would not be prohibited from wearing a uniform while campaigning for a political issue or candidate. In my opinion, neither activity would be prohibited by subsection (3).

Again, subsection (3)(a) only prevents use of "public time, facilities, equipment, supplies, personnel, or funds" in the furtherance of personal political speech. A title or a uniform is simply an accouterment of a public employee's or officer's position. A sheriff is not required to shed all associations, including his uniform, with his official position in order to exercise his protected right to express personal political beliefs.

The presumption is that free speech rights are protected and only the very specific restrictions in Mont. Code Ann. § 2-2-121 can be invoked to limit a public officer's or public employee's right to political speech.

THEREFORE, IT IS MY OPINION:

> A public officer or public employee may engage in political speech so long as his or her speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds.

Very truly yours,

MIKE McGRATH
Attorney General

mm/anb/jym

2-2-121. Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A candidate, as defined in 13-1-101(6)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act.

History: En. 59-1706 by Sec. 6, Ch. 569, L. 1977; R.C.M. 1947, 59-1706; amd. Sec. 1, Ch. 59, L. 1991; amd. Sec. 7, Ch. 562, L. 1995; amd. Sec. 3, Ch. 42, L. 1997; amd. Sec. 3, Ch. 122, L. 2001; amd. Sec. 1, Ch. 58, L. 2003; amd. Sec. 1, Ch. 145, L. 2005; amd. Sec. 3, Ch. 173, L. 2005; amd. Sec. 1, Ch. 437, L. 2005.

Compiler's Comments:

2005 Amendments -- Composite Section: Chapter 145 inserted (4) prohibiting a candidate for public office from using state funds for advertisement or public service announcement except in emergency and only if announcement reasonably necessary to candidate's official functions; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 173 in (2)(a) at beginning inserted "subject to subsection (7)"; inserted (7) allowing a public officer or employee who creates a product outside of work to be listed in the electronic directory without violating public employee conduct standards, but prohibiting public officer or employee from making directory arrangements during work hours; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 437 in (3)(a) at beginning inserted exception clause; inserted (3)(b)(ii) relating to school district compliance with laws governing public meetings of a board of trustees and any resulting dissemination of information on a bond issue or levy and prohibiting the use of public funds for commercial ads for or against a bond issue or levy; and made minor changes in style. Amendment effective April 28, 2005.

Source: Subsection (4) is based on North Carolina General Statutes, section 163-278.16A.

2003 Amendment: Chapter 58 in (4) near middle of introductory clause and in (5) near middle of first sentence after "organization" inserted "other than an organization or association of local government officials"; and made minor changes in style. Amendment effective February 28, 2003.

2001 Amendment: Chapter 122 in (3)(a) substituted "to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue" for "for any campaign activity persuading or affecting a political decision"; in (3)(a)(ii) substituted references to an officer for references to an official; inserted (3)(b) relating to what is properly incidental to another activity required or authorized by law; inserted (3)(c) allowing expression

of personal political views; in (4) at beginning substituted "public officer or public employee" for "state employee" and throughout subsection substituted references to public officer or public employee for references to employee; in (4)(a) after "employing" deleted "state"; at end of (4)(b) after "state" inserted "or local government"; in (5) at beginning substituted "public officer or public employee" for "state officer or state employee" and throughout subsection substituted references to public officer or public employee for references to officer or employee; inserted (8) concerning local governing body member's official action and disclosure; deleted former (8) that read: "(8) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $1,000, by imprisonment in the county jail for not more than 6 months, or by both. A civil proceeding under 2-2-136 or 2-2-144 does not preclude an action under this subsection"; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 42 in (4)(a), after "employing", inserted "state". Amendment effective March 12, 1997.

1995 Amendment: Chapter 562 in (1) substituted "subsection (2)" for "this section" and substituted "a public" for "his fiduciary"; in (2), in two places in introductory clause, in (2)(a), and in (7) substituted "public" for "state"; in (2)(a) inserted "supplies, personnel, or funds"; inserted (3), (4), and (5) regarding rules of conduct for public or state officers or employees; in (6), after "complies with the", deleted "voluntary"; inserted (8) providing penalties; and made minor changes in style. Amendment effective July 1, 1995.

Preamble: The preamble attached to Ch. 562, L. 1995, provided: "WHEREAS, Article XIII, section 4, of the Montana Constitution is unambiguous in its intent of prohibiting conflict between public duty and private interest for members of the Legislature and for all state and local government officers and employees."

Severability: Section 25, Ch. 562, L. 1995, was a severability clause.

1991 Amendment: Inserted (2)(f) requiring a state officer or employee soliciting or accepting employment or engaging in negotiations or meetings regarding employment with a person whom he regulates to first notify his supervisor and Director in writing.

EXHIBIT 8
DATE 1/22/09
HB 246 & HB 228

Gary S. Marbut
– President –

Montana Shooting Sports Association
Asserting the Rights of Gun Owners in Montana

PO Box 4924
Missoula, MT 59806
www.mtssa.org

(406) 549-1252
E-mail: mssa@mtssa.org

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
61st LEGISLATURE - REGULAR SESSION

HOUSE JUDICIARY COMMITTEE

Date: Thursday, January 22, 2009 **Time:** 8:00 am
Place: Capitol **Room:** 137

BILLS and RESOLUTIONS HEARD:
Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

HB 228, HB 246

EXECUTIVE ACTION TAKEN:
Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

COMMENTS:

Ron Stoker

REP. Ron Stoker, Chairman

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE: 1/22/08

NAME	PRESENT	ABSENT/ EXCUSED
Rep. Peterson		X
Rep. Kottel	X	
Rep. Kerns	X	
Rep. Sands	X	
Rep. Bennett	X	
Rep. MacDonald	X	
Rep. More	X	
Rep. Ebinger		X
Rep. Wagner	X	
Rep. Becker		X
Rep. Driscoll	X	
Rep. Regier	X	
Rep. McClafferty	X	
Rep. Howard	X	
Rep. Blewett	X	
Rep. Warburton	X	
Rep. Menahan	X	
Rep. Stoker	X	

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1/22/09

Bill No. HB 228 **Sponsor(s)** Rep. Kerns

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Doug Getz, Helena	Self	XXX		
HARRIS HIMES				
Gene Williams	Self			
SUSANNA PYRON				
Mike Craddock	Students for Concealed Carry on Campus (SCCC)	X		
DAVID ARBENZ	MYSELF	X		
Kim MILBURN	myself	X		
Jim Shaffer	myself	X		
RICK LEPAGE EAST HELENA	MYSELF	X		
GARY MARBUT MISSOULA	MSSA, GOA, CCRKBA WMFG, LUCSM, BSPC MORE	X		
Dale Franke	my Self	X.		
Alfredo Romero	Self	X		
Luke Mordock	self	X		
Bruce Charles	Self	X		
DAVID ANDERSON	Constitution Party of Yellowstone Co. & Self	X		
3750 Meadowlark Dr. E. Helena Lincoln Dziekonski	self	X		
STEVEN HAUK 531 CROW RD. GARRISON	self	X		
JAMES SCHELL	Self	X		
Dale Gall	MAA	Amend		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

HB 228

		Support	Oppose
Don Doig PO Box 503 Manhattan MT	Self	X	
Franklin Shock Three Forks	Jefferson River Coalition	X	
Dennis Paxinos	MCAA		X
Jim Cashell	MSPOA		X
Vern L Burdick	MSPOA		X
Mark Muir	Missoula Police		X
Ryan Osten	Hamilton Police		X
Kevin McConnell	MSPOA		X
Mike Manion	Dept of Admin.		X
Steven Shook	Hamilton P.D.		X
Randy Pinocci	self	X	
[illegible]	[illegible]	[illegible]	
Brian Judy	NRA	X	

HB 228

		Support	Oppose
Don Doig PO Box 503 Manhattan MT	Self	X	
Franklin Shook Three Forks	Jefferson River Coalition	X	
Dennis Paxinos	MCAA		X
Jim Cashell	MSPOA		X
Vern L Burdick	MSPOA		X
Mark Muir	Missoula Police		X
Ryan Osten	Hamilton Police		X
Kevin McConnell	MSPOA		X
Mike Manion	Dept of Admin.		X
Steven Shook	Hamilton P.D.		X
Randy Pinocci	self	X	
Bruce Spencer MAPA		X - concerned about amendments	
Brian Judy	NRA	X	

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1/22/09

Bill No. HB 228 **Sponsor(s)** ~~Rep. Bonnie~~ Rep Kerns

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
FRANKLIN STOCK THREE FORKS 59760	JEFFERSON RIVER COALITION	X		
DON DOIG POBOX503 MANHATTAN	Self	X		
Jim Smith	Sheriffs / County Atty's		+	
[redacted]	[redacted]			[redacted]
Jamee Greer	MT HUMAN RIGHTS NETWORK		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chairman Ron Stoker, on January 30, 2009 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Ron Stoker, Chairman (R)
Rep. Deborah Kottel, Vice Chairman (D)
Rep. Ken Peterson, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Gerald Bennett (R)
Rep. Anders Blewett (D)
Rep. Robyn Driscoll (D)
Rep. Bob Ebinger (D)
Rep. David Howard (R)
Rep. Krayton Kerns (R)
Rep. Margaret MacDonald (D)
Rep. Edith (Edie) McClafferty (D)
Rep. Mike Menahan (D)
Rep. Michael More (R)
Rep. Keith Regier (R)
Rep. Diane Sands (D)
Rep. Bob Wagner (R)
Rep. Wendy Warburton (R)

Members Excused: None

Members Absent: None

Staff Present: Jennifer Eck, Committee Secretary
David Niss, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 40, 1/21/2009; SB 91, 1/21/2009

Executive Action: HB 176, HB 228

00:37:59 Rep. Sands
00:38:35 Sen. Juneau
EXHIBIT(juh22a03)
00:41:54 Rep. Sands
00:42:13 Rep. Menahan
00:43:58 Chairman Stoker
00:43:59 Rep. MacDonald
00:44:47 Sen. Juneau
00:46:22 Chairman Stoker
00:46:26 Rep. Becker
00:46:42 Chairman Stoker
00:46:44 Rep. Becker
00:47:41 Mr. Cater
00:48:39 Rep. Becker
00:48:57 Rep. Menahan

Closing by Sponsor:

00:50:37 Sen. Juneau
00:51:19 Chairman Stoker
00:51:43 Mr. Niss
00:54:56 Chairman Stoker

00:54:58 Recess
01:16:07 Reconvene
01:16:08 Chairman Stoker

EXECUTIVE ACTION ON HB 228

01:16:16 **Motion:** Rep. Peterson moved that **HB 228 DO PASS.**
EXHIBIT(juh22a04)

Discussion:

01:16:27 **Motion:** Rep. Kerns moved that **HB 228 BE AMENDED.**

Discussion:

01:17:36 Chairman Stoker
01:17:51 Rep. Kerns
01:18:28 Rep. Kerns called the question.
01:18:50 Chairman Stoker
01:19:23 Mr. Niss
01:20:13 Chairman Stoker
01:20:20 Rep. Kerns
01:20:22 Chairman Stoker

01:20:26 **Vote:** Motion that **HB 228 BE AMENDED** carried unanimously by roll call vote.

01:21:27 **Motion**: Rep. Peterson moved that **HB 228 DO PASS AS AMENDED.**

01:21:33 **Motion**: Rep. Kottel moved that **HB 228 BE AMENDED.**
EXHIBIT(juh22a05)

Discussion:

01:22:02 Rep. Kottel
01:23:18 Rep. Kerns
01:23:23 Rep. Peterson
01:24:04 Chairman Stoker
01:24:15 Rep. Peterson
01:24:35 Rep. Howard
01:25:01 Chairman Stoker
01:25:06 Rep. Kottel
01:26:08 Rep. Peterson
01:26:39 Rep. Regier
01:26:57 Rep. Kottel
01:27:38 Rep. Warburton
01:28:17 Rep. Kerns
01:28:51 Rep. Peterson
01:29:35 Mr. Niss
01:30:18 Rep. Howard
01:30:57 Chairman Stoker
01:31:04 Rep. Menahan
01:31:38 Chairman Stoker
01:31:46 Rep. Howard
01:31:51 Rep. Menahan
01:32:37 Rep. Peterson
01:33:10 Rep. Kerns called the question.

01:33:14 **Vote**: Motion that **HB 228 BE AMENDED** carried 11-7 by roll call vote with Rep. Sands, Rep. MacDonald, Rep. Ebinger, Rep. Becker, Rep. Driscoll, Rep. Blewett, and Rep. Menahan voting no.

01:35:27 **Motion**: Rep. Peterson moved that **HB 228 DO PASS AS AMENDED.**

01:35:42 Chairman Stoker

01:35:46 **Motion**: Rep. Kerns moved that **HB 228 BE AMENDED.**

Discussion:

01:36:06 Chairman Stoker
01:36:36 Mr. Niss
01:37:55 Chairman Stoker

01:38:13 Rep. Peterson
01:38:25 Chairman Stoker
01:38:38 Rep. Kerns called the question.

01:38:51 **Vote**: Motion that **HB 228 BE AMENDED** carried unanimously by voice vote.

01:39:03 **Motion**: Rep. Peterson moved that **HB 228 DO PASS AS AMENDED.**

01:39:16 **Motion**: Rep. Blewett moved that **HB 228 BE AMENDED.**

Discussion:

01:40:25 Chairman Stoker
01:40:40 Rep. Blewett
01:41:58 Chairman Stoker
01:42:07 Rep. Kottel
01:45:35 Chairman Stoker
01:45:37 Rep. Sands
01:46:10 Chairman Stoker
01:46:22 Rep. Menahan
01:47:10 Rep. Sands
01:47:35 Rep. Menahan
01:49:12 Rep. Howard
01:49:37 Rep. Kottel
01:49:39 Rep. Howard
01:50:03 Rep. Menahan
01:50:11 Rep. Howard
01:50:12 Chairman Stoker
01:50:24 Rep. Menahan
01:55:02 Rep. Peterson called the question.
01:55:09 Rep. MacDonald
01:55:15 Rep. Menahan
01:55:16 Rep. MacDonald
01:56:32 Rep. Menahan
01:56:35 Rep. Sands exited meeting.
01:58:26 Rep. Peterson called the question.
01:58:36 Chairman Stoker
01:58:40 Rep. Blewett
01:59:21 Chairman Stoker

01:59:45 **Vote**: Motion that **HB 228 BE AMENDED** failed 8-10 by roll call vote with Rep. MacDonald, Rep. Ebinger, Rep. Becker, Rep. Driscoll, Rep. McClafferty, Rep. Blewett, Rep. Sands, and Rep. Menahan voting aye. Rep. Sands voted by proxy.

02:01:02 **Motion**: Rep. Peterson moved that **HB 228 DO PASS AS AMENDED.**

Discussion:

02:01:17 Chairman Stoker
02:01:22 Rep. Wagner
02:02:17 Rep. Peterson called the question.

02:02:23 **Vote**: Motion that **HB 228 DO PASS AS AMENDED** carried 10-8 by roll call vote with Rep. MacDonald, Rep. Ebinger, Rep. Becker, Rep. Driscoll, Rep. McClafferty, Rep. Blewett, Rep. Menahan, and Rep. Sands voting no. Rep. Sands voted by proxy.

02:03:39 Chairman Stoker

EXECUTIVE ACTION ON HB 176

02:04:00 **Motion**: Rep. Kottel moved that **HB 176 DO PASS.**

Discussion:

02:04:01 Chairman Stoker
02:04:13 Rep. Kottel
02:07:01 Chairman Stoker
02:07:34 Rep. Peterson
02:07:40 Rep. Kottel

02:07:57 **Motion**: Rep. Peterson moved that **A COMMITTEE BILL BE ADOPTED.**

Discussion:

02:08:03 Chairman Stoker
02:08:15 Rep. MacDonald exited meeting.
02:08:20 Rep. Menahan
02:08:38 Chairman Stoker
02:08:44 Rep. Menahan
02:09:49 Chairman Stoker

02:09:58 **Substitute Motion**: Rep. Peterson made a substitute motion that **HB 176 BE TABLED.**

02:10:44 **Vote**: Substitute motion that **HB 176 BE TABLED** carried 13-5 by voice vote with Rep. Becker, Rep. Wagner, Rep. Sands, Rep. MacDonald, and Rep. Kottel voting no. Rep. Sands and Rep. MacDonald voted by proxy.

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 228** (first reading copy – white) **do pass as amended.**

Signed: _____
Representative Ron Stoker, Chair

And, that such amendments read:

1. Page 1, line 21.
Strike: "5"
Insert: "4"

2. Page 1, line 29.
Following: "firearm"
Insert: "to a person other than an identified peace officer"

3. Page 2, lines 17 through page 3, line 24.
Strike: sections 5 and 6 in their entirety
Renumber: subsequent sections

4. Page 4, lines 7 through 15.
Strike: section 9 in its entirety
Renumber: subsequent sections

5. Page 5, line 17.
Strike: "5"
Insert: "4"

6. Page 5, line 19.

Committee Vote:
Yes 10, No 8
Fiscal Note Required __

HB0228001SC.hjd

Strike: "5"
Insert: "4"

7. Page 5, lines 20 and 21.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections

8. Page 5, line 22.
Strike: "7"
Insert: "5"

9. Page 5, line 23.
Strike: "7"
Insert: "5"

10. Page 5, line 24.
Strike: "8"
Insert: "6"

11. Page 5, line 25.
Strike: "8"
Insert: "6"

12. Page 5, lines 26 and 27.
Strike: subsection (5) in its entirety

- END -

EXHIBIT 4
DATE 1/30/09
HB 228

Amendments to House Bill No. 228
1st Reading Copy

Requested by Representative Krayton Kerns

For the House Judiciary Committee

Prepared by David Niss
January 21, 2009 (4:22pm)

1. Page 2, line 23 through page 3, line 24.
Strike: section 6 in its entirety
Renumber: subsequent sections

2. Page 4, lines 7 through 15.
Strike: section 9 in its entirety
Renumber: subsequent sections

3. Page 5, lines 20 and 21.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections

4. Page 5, line 22.
Strike: "7"
Insert: "6"

5. Page 5, line 23.
Strike: "7"
Insert: "6"

6. Page 5, line 24.
Strike: "8"
Insert: "7"

7. Page 5, line 25.
Strike: "8"
Insert: "7"

8. Page 5, lines 26 and 27.
Strike: subsection (5) in its entirety

EXHIBIT 5
DATE 1/30/2009
HB 228

Amendments to House Bill No. 228
1st Reading Copy

Requested by Representative Deborah Kottel

For the House Judiciary Committee

Prepared by David Niss
January 24, 2009 (9:24am)

1. Page 1, line 29.
Following: "firearm"
Insert: "to a person other than ~~a~~ peace officer"
^ an identified

- END -

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
61st LEGISLATURE - REGULAR SESSION

HOUSE JUDICIARY COMMITTEE

Date: Friday, January 30, 2009 **Time:** 8:00 am
Place: Capitol **Room:** 137

BILLS and RESOLUTIONS HEARD:
Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

SB 40, SB 91

EXECUTIVE ACTION TAKEN:
Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

HB 228 (Do pass as three amended)

HB 176 (Tabled)

COMMENTS:

Ron Stoker

REP. Ron Stoker, Chairman

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE: 1/30/04

NAME	PRESENT	ABSENT/ EXCUSED
Rep. Peterson	X	
Rep. Kottel	X	
Rep. Kerns	X	
Rep. Sands	X	
Rep. Bennett	X	
Rep. MacDonald	X	
Rep. More	X	
Rep. Ebinger	X	
Rep. Wagner	X	
Rep. Becker	X	
Rep. Driscoll	X	
Rep. Regier	X	
Rep. McClafferty	X	
Rep. Howard	X	
Rep. Blewett	X	
Rep. Warburton	X	
Rep. Menahan	X	
Rep. Stoker	X	

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/30/09 BILL NO HB 228 MOTION NO.

MOTION: Do PASS Amendment HB022802.adn (Rep. Kerns)

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Ken Peterson	X		
Deborah Kottel	X		
Krayton Kerns	X		
Diane Sands	X		
Gerald Bennett	X		
Margaret MacDonald	X		
Michael More	X		
Bob Ebinger	X		
Bob Wagner	X		
Arlene Becker	X		
Robyn Driscoll	X		
Keith Regier	X		
Edith McClafferty	X		
David Howard	X		
Anders Blewett	X		
Wendy Warburton	X		
Mike Menahan	X		
Ron Stoker	X		

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/30/09 BILL NO HB 228 MOTION NO. _____

MOTION: Conceptual amendment on HB 228 (HB 022803.adn) (Rep. Kottel)

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Ken Peterson	X		
Deborah Kottel	X		
Krayton Kerns	X		
Diane Sands		X	
Gerald Bennett	X		
Margaret MacDonald		X	
Michael More	X		
Bob Ebinger		X	
Bob Wagner	X		
Arlene Becker		X	
Robyn Driscoll		X	
Keith Regier	X		
Edith McClafferty	X		
David Howard	X		
Anders Blewett		X	
Wendy Warburton	X		
Mike Menahan		X	
Ron Stoker	X		
	11	7	

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/30/09 BILL NO HB 228 MOTION NO.

MOTION:

Do PASS Conceptual amendment to strike lines 18 & 19 on page 1 of HB 228. (Rep. Blewett)

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Ken Peterson		X	
Deborah Kottel		X	
Krayton Kerns		X	
Diane Sands	X		X
Gerald Bennett		X	
Margaret MacDonald	X		
Michael More		X	
Bob Ebinger	X		
Bob Wagner		X	
Arlene Becker	X		
Robyn Driscoll	X		
Keith Regier		X	
Edith McClafferty	X		
David Howard		X	
Anders Blewett	X		
Wendy Warburton		X	
Mike Menahan	X		
Ron Stoker		X	
	8	10	

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/30/09 BILL NO HB228 MOTION NO. _____

MOTION: DO PASS HB 228 as three times amended.

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Ken Peterson	X		
Deborah Kottel	X		
Krayton Kerns	X		
Diane Sands		X	X
Gerald Bennett	X		
Margaret MacDonald		X	
Michael More	X		
Bob Ebinger		X	
Bob Wagner	X		
Arlene Becker		X	
Robyn Driscoll		X	
Keith Regier	X		
Edith McClafferty		X	
David Howard	X		
Anders Blewett		X	
Wendy Warburton	X		
Mike Menahan		X	
Ron Stoker	X		
	10	8	

AUTHORIZED
COMMITTEE PROXY

I request to be excused from the Finance Committee

Committee because of other commitments. I desire to leave my proxy vote with:

Deb Kaiser

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
HB 228		
3rd Amendment	X	
on Bill →		X
HB 176 Table		X

BILL/AMENDMENT	AYE	NO

Rep. [signature] Date 1-30-09

(Signature)

HOUSE BILL NO. 228

INTRODUCED BY K. KERNS, ANKNEY, ARNTZEN, BALYEAT, BENNETT, BLACK, BLASDEL, BONIEK, R. BROWN, T. BROWN, CAMPBELL, CURTISS, GALLUS, HAMLETT, HENDRICK, HINKLE, HOVEN, INGRAHAM, JACKSON, JONES, KOTTEL, MCGEE, MEHLHOFF, MILLER, MORE, RANDALL, ROUNDSTONE, SMITH, SONJU, VANCE, WARBURTON

A BILL FOR AN ACT ENTITLED: "AN ACT PRESERVING AND CLARIFYING LAWS RELATING TO THE RIGHT OF SELF-DEFENSE AND THE RIGHT TO BEAR ARMS; AMENDING SECTIONS 45-8-315, 45-8-316, AND 46-6-502, MCA; AND REPEALING SECTION 45-8-317, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** The legislature declares that:

(1) the right of Montanans to defend their lives and liberties, as provided in Article II, section 3, of the Montana constitution, and their right to keep or bear arms in defense of their homes, persons, and property, as provided in Article II, section 12, of the Montana constitution, is fundamental and may not be called into question;

(2) the use of firearms for self-defense is recognized within the right reserved to the individual people of Montana in Article II, section 12, of the Montana constitution;

(3) self-defense is a natural right under 1-2-104 and is included in 49-1-101 and 49-1-103;

(4) the lawful use of firearms for self-defense is not a crime or an offense against the people of the state;

(5) if self-defense is asserted by a defendant in a criminal action, the state has the burden to prove the absence of justification beyond a reasonable doubt;

(6) the use of firearms for self-defense discourages violent crime and prevents victimization; and

(7) the purpose of [sections 1 through ~~5~~ 4] is to clarify and secure the ability of the people to protect themselves from wrongful assault.

NEW SECTION. **Section 2. No duty to summon help or flee.** Except as provided in 45-3-105, a person who is lawfully in a place or location and who is threatened with bodily injury or loss of life has no duty to retreat from a threat or summon law enforcement assistance prior to acting in self-defense.

NEW SECTION. **Section 3. Defensive display of firearm not offense.** (1) A person who displays or shows a firearm ~~TO A PERSON OTHER THAN AN IDENTIFIED PEACE OFFICER~~ for a harmless defensive purpose needs no justification for the display and may not be charged with or convicted of an offense for that display.

(2) Displaying or showing a firearm includes but is not limited to:

(a) openly wearing, carrying, or possessing a firearm;

(b) verbally informing another that one possesses a firearm; and

(c) holding a firearm in a position so that the firearm does not point directly at another person.

(3) The right to show or display a firearm does not include the following situations, and justification is required for the display:

(a) intentionally or recklessly pointing a firearm directly at another person or sweeping another person with the muzzle of a firearm;

(b) intentionally discharging a firearm in the direction of another person; ~~or~~

(c) deliberately provoking another person into threatening words or actions when possessing a firearm;

(D) NEGLIGENTLY OR PURPOSEFULLY THREATENING A PEACE OFFICER WITH A FIREARM;

(E) DISPLAYING A FIREARM DURING THE COMMISSION OF A FORCIBLE FELONY; OR

(F) DISPLAYING A FIREARM AS PART OF A PATTERN OF CRIMINAL STREET GANG ACTIVITY AS DEFINED IN 45-8-405.

NEW SECTION. **Section 4. Investigation of alleged offense involving self-defense claim.** When an investigation is conducted by a peace officer of an incident that appears to have been or is alleged to have been in self-defense, the investigation must be conducted so as to disclose all evidence, including testimony, that might support the alleged offense and the apparent or alleged self-defense.

~~NEW SECTION. **Section 5. Award of attorney fees and costs -- charge dismissed -- person found not guilty.** In a criminal prosecution of a person who is accused of an offense and who asserts the right of self-defense under Article II, section 12, of the Montana constitution, if the charge is dismissed or the person is found not guilty, the court shall award the person reasonable attorney fees and costs specific to the defense of the charge.~~

~~NEW SECTION. **Section 6. Conditions for seizure of firearm -- return of seized firearm.** (1) Unless a firearm is seized pursuant to 46-5-401, a peace officer may seize a legally possessed firearm only:~~

~~(a) at an incident in which a firearm is present and a peace officer on the scene has probable cause to believe that the firearm was used to commit a crime. However, the peace officer may take only that firearm and no other into temporary custody, for up to 2 hours, to secure the safety of persons at the scene. If an arrest is not made, the firearm must be returned to the person from whom it was seized or to the rightful owner if that is determined to be another person no later than the end of the 2-hour custody period, unless a court order is obtained to retain the firearm.~~

~~(b) if a person is arrested because of probable cause to believe that the person has committed a crime and it is alleged with probable cause that the firearm has been used to further that crime. The firearm must be returned to the person from whom it was seized or to the rightful owner, if that is determined to be a different person, unless a court order is obtained to retain the firearm, within 2 weeks of the seizure if a criminal charge has not been filed against the person from whom the firearm was seized.~~

~~(2) If a criminal charge against a person from whom a firearm has been seized is dismissed or the person is found not guilty, the firearm must be returned to the person or to the rightful owner if that is determined to be a different person within 48 hours of the dismissal or of a verdict of not guilty if no other charges directly relating to the firearm are pending.~~

~~(3) A person from whom a firearm is seized or kept in a manner that is not consistent with this section may compel the return of the firearm by demanding the return in writing, without regard to the form of the writing, delivered to a representative of the law enforcement agency that initially seized the firearm. The demand must be honored within 24 hours. This process does not require an order of any court to be effective. If the firearm is not returned, the person may seek an immediate writ of mandamus from the district court judge or justice of the peace to compel the return. The person may also seek judicial sanctions and reasonable attorney fees if the person prevails against a law enforcement agency that has failed to comply with the initial demand for return. A person who may not legally possess any firearm or the type of firearm seized is not authorized to demand the return of a firearm under this subsection.~~

~~(4) A peace officer or law enforcement agency in possession of a firearm under this section shall exercise due care to prevent loss of or damage to the firearm and may be held liable for any loss or damage.~~

~~(5) If a peace officer or law enforcement agency seizes a firearm under this section, the person from whom the firearm was seized must be given a receipt for the firearm by the officer who seized the firearm or by another officer from the seizing officer's agency. The receipt must contain enough specificity to identify the firearm and must be given by either of those officers before the seizing officer leaves the scene of the seizure.~~

NEW SECTION. **Section 5. Firearm not to be destroyed.** If a firearm possessed by a law enforcement agency was not purchased by the agency for agency use, if it is legal for a private person to own and possess the firearm, and if the legal owner cannot be determined by the agency, the agency may not destroy the firearm and shall sell the firearm to a licensed dealer. The proceeds of the sale must be deposited in the general fund of the governmental entity of which the agency is a part.

NEW SECTION. **Section 6. Landlords and tenants -- no firearm prohibition allowed.** A landlord or operator of a hotel or motel may not, by contract or otherwise, prevent a tenant or a guest of a tenant from possessing on the premises a firearm that it is legal for the tenant or guest to possess. A landlord or operator of a hotel or motel may prohibit the discharge of a firearm on the premises except in self-defense.

~~NEW SECTION. **Section 9. Employer prohibition of means of self-defense.** (1) An employer who as a condition of employment prohibits an employee from possessing the means of defending the employee in the workplace, including the possession of firearms, shall provide a level of security and safety for the employee equal to that which the employee could have provided without the prohibition. An employer who violates this requirement is liable for injury to the employee caused by a criminal act against the employee at the workplace if the injury would not have occurred but for the employer's prohibition. This subsection does not apply to an employee of the government of the United States or of a school district of this state.~~

~~(2) An employer may not prohibit an employee from keeping a firearm in a vehicle owned by the employee and parked at the workplace.~~

Section 7. Section 45-8-315, MCA, is amended to read:

"45-8-315. Definition. "Concealed weapon" means any weapon mentioned in 45-8-316, ~~through~~ 45-8-318, and 45-8-321 through 45-8-328 that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon, except that for purposes of 45-8-321 through 45-8-328, concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon."

Section 8. Section 45-8-316, MCA, is amended to read:

"45-8-316. Carrying concealed weapons. (1) ~~Every~~ A person who carries or bears concealed upon ~~his~~ the person, if using it to commit a criminal offense, a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon ~~his~~ the person, if using it to commit a criminal offense, any of the weapons described in subsection (1) shall be punished by a fine not exceeding $1,000 or imprisoned in the state prison for a period not exceeding 5 years, or both."

Section 9. Section 46-6-502, MCA, is amended to read:

"46-6-502. Arrest by private person. (1) A private person may arrest another when there is probable cause to believe that the person is committing or has committed an offense and the existing circumstances require the person's immediate arrest. The private person may use reasonable force to detain the arrested person. Force likely to cause death or serious bodily harm may be used only under the conditions specified in 45-3-101 through 45-3-106.

(2) A private person making an arrest shall immediately notify the nearest available law enforcement agency or peace officer and give custody of the person arrested to the officer or agency."

NEW SECTION. **Section 10. Repealer.** Section 45-8-317, MCA, is repealed.

NEW SECTION. **Section 11. Codification instruction.** (1) [Sections 1 through ~~5~~ 4] are intended to be codified as an integral part of Title 45, chapter 3, part 1, and the provisions of Title 45, chapter 3, part 1, apply to [sections 1 through ~~5~~ 4].

~~(2) [Section 6] is intended to be codified as an integral part of Title 46, chapter 5, part 1, and the provisions of Title 46, chapter 5, part 1, apply to [section 6].~~

~~(3)~~(2) [Section ~~7~~ 5] is intended to be codified as an integral part of Title 46, chapter 5, part 3, and the provisions of Title 46, chapter 5, part 3, apply to [section ~~7~~ 5].

~~(4)~~(3) [Section ~~8~~ 6] is intended to be codified as an integral part of Title 70, chapter 1, part 4, and the

provisions of Title 70, chapter 1, part 4, apply to [section ~~8~~ 6].

~~(5) [Section 9] is intended to be codified as an integral part of Title 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [section 9].~~

- END -

MINUTES

MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chairman Gary L. Perry, on March 17, 2009 at 9:00 A.M., in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Gary L. Perry, Chairman (R)
Sen. Jim Shockley, Vice Chairman (R)
Sen. Aubyn Curtiss (R)
Sen. John Esp (R)
Sen. Greg Hinkle (R)
Sen. Larry Jent (D)
Sen. Carol C. Juneau (D)
Sen. Cliff Larsen (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Terry Murphy (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 228, HJ 14, 3/10/2009

Executive Action: None

HEARING ON HB 228

Opening Statement by Sponsor:

00:27:33 Rep. Krayton Kerns (R), HD 58, opened the hearing on HB 228, Citizen self-defense and firearm rights.
EXHIBIT(jus59a01)

Proponents' Testimony:

00:36:53 Rep. Deborah Kottel, HD 20
00:43:37 Gary Marbut, Montana Shooting Sports Association
EXHIBIT(jus59a02)
EXHIBIT(jus59a03)
00:47:21 Brian Judy, NRA
EXHIBIT(jus59a04)
00:53:46 Gregg Trude, self
00:55:03 Tim Ravndal, Montana Multiple Use Association
00:56:10 Wayne Delzer, self
00:57:26 Doug Nulle, self
01:02:04 Rep. Wendy Warburton, HD 34
01:03:35 Rick Carter, self
01:04:42 Randy Pinocci, self
01:06:09 Harvey Hollandsworth, self
01:08:01 Tom Martin, self
01:08:35 Dennis Mills, self
01:09:50 Roland Horst, self
01:10:23 Lincoln Dziekonski, self
01:11:22 Pat Wood, self
01:11:40 Dave Wood, self
01:12:39 Erick Prather, self

01:16:11 break

Opponents' Testimony:

01:29:30 Daryl Anderson, Lincoln County Sheriff; President, Montana Sheriffs and Peace Officers Association
01:30:29 Jim Cashell, Gallatin County Sheriff; Montana Sheriffs and Peace Officers Association
01:36:22 Mark Muir, Missoula Chief of Police; Montana Association of Chiefs of Police
EXHIBIT(jus59a05)
01:38:50 John Schaffer, Training Coordinator, Great Falls Police Department; Montana Police Protective Association
01:41:19 Brian Black, Police Officer, Street Crimes Unit, Great Falls Police Department; Montana Police Protective Association

01:44:20 Jesse Slaughter, Montana Police Protective Association; Police Officer; Field Training Officer; Firearm Instructor
01:48:56 Fred Van Valkenburg, Missoula County Attorney, Missoula
01:56:12 JoAnne Racine, self
01:57:54 Ali Bovingdon, Assistant Attorney General, DOJ
02:03:09 Maureen Weiland, Associated Students of Montana State University (ASMSU)

EXHIBIT(jus59a06)
EXHIBIT(jus59a07)

02:04:42 Merle Raph, Montana County Attorneys Association
02:05:15 Pat Draigman, Sweetgrass County Attorney; Montana County Attorneys Association
02:08:55 Leo Gallagher, Montana County Attorneys Association
02:11:44 Mike Guy, Police Officer, Billings Police Department
02:13:32 Dave Loewen, Game Warden, Montana Game Warden Association
02:14:01 Jim Lemke Chief of Police, University of Montana
02:14:30 Shantelle Gaynor, Grants Administrator, Missoula County Office of Planning and Grants; Office of Crime Victim Advocates

EXHIBIT(jus59a08)

02:15:24 Kim Campbell, Domestic Violence and Education Services (DOVES) of Polson
02:15:45 Sheila Stearns, Commissioner of Higher Education

EXHIBIT(jus59a09)

02:16:13 Dan Carter, Montana State University-Billings
02:16:31 Frank Gilmore, self
02:16:45 Dennis Lopach, self
02:16:58 Dustin Leftridge, Associated Students of Montana State University

EXHIBIT(jus59a10)

02:17:20 Cathy Conover, Montana State University; also for Montana State University President, Geoff Gamble
02:17:39 Jamee Greer, Montana Human Rights Network

EXHIBIT(jus59a11)

02:17:57 Kelsen Young, Executive Director, Montana Coalition Against Domestic and Sexual Violence; also for Judy Wang, Assistant City Attorney, Missoula

EXHIBIT(jus59a12)
EXHIBIT(jus59a13)
EXHIBIT(jus59a14)

02:18:30 Ivy English, student, Montana State University
02:18:57 Lucas Hamilton, Associated Students, Montana State University

EXHIBIT(jus59a15)
EXHIBIT(jus59a16)

02:19:14 Larry Epstein, Glacier County Attorney, Kalispell
02:19:39 Dave Schenk, Sheriff, Madison County; Montana Sheriffs and Peace Officers Association
02:20:02 Marty Lambert, Gallatin County Attorney, Bozeman
02:20:20 Truman Tolson, President, Montana Police Protective Association
02:20:35 Dave Castle, Sheriff, Cascade County, Great Falls
02:20:53 Mitch Jessen, Student Member, Board of Regents

Informational Testimony:

none

Questions from Committee Members and Responses:

02:21:35 Sen. Jent
02:22:12 Rep. Kern
02:25:56 Sen. Jent
02:26:08 Mr. Marbut
02:29:15 Sen. Jent
02:29:26 Mr. Judy
02:31:13 Sen. Jent
02:32:25 Rep. Kottel
02:33:07 Sen. Shockley
02:33:31 Ms. Stearns
02:37:19 Sen. Esp
02:37:54 Mr. Gallagher
02:39:48 Sen. Esp
02:40:09 Rep. Kerns
02:42:33 Sen. Esp
02:42:46 Mr. Gallagher
02:45:02 Sen. McGee
02:45:44 Rep. Kottel
02:46:44 Sen. McGee
02:47:01 Mr. Black
02:56:17 Sen. Laslovich
02:56:31 Mr. Judy
02:57:03 Sen. Laslovich
02:57:08 Rep. Kerns
02:59:45 Sen. Laslovich
03:00:02 Mr. Epstein
03:01:20 Sen. Perry
03:01:45 Sen. Shockley
03:02:57 Sen. McGee
03:03:17 Sen. Shockley
03:03:38 Mr. Marbut
03:06:24 Sen. Hinkle
03:06:51 Mr. Gallagher
03:07:36 Sen. Hinkle

03:07:55 Mr. Slaughter
03:08:25 Sen. Hinkle
03:08:54 Mr. Marbut
03:11:10 Sen. Curtiss
03:11:35 Ms. Bovingdon
03:12:10 Sen. Curtiss
03:12:38 Mr. Castle
03:14:34 Sen. Juneau
03:15:08 Mr. Gallagher
03:17:18 Sen. Juneau
03:17:35 Ms. Young
03:20:35 Sen. Larsen
03:20:57 Rep. Kerns
03:21:22 Sen. Moss
03:22:25 Ms. Stearns
03:24:17 Sen. Perry
03:24:39 Mr. Guy
03:25:32 Sen. Perry
03:25:47 Mr. Muir
03:27:55 Sen. Perry
03:28:23 Rep. Kerns
03:31:50 Sen. Perry
03:32:22 Mr. Schaffer
03:33:28 Sen. Hinkle
03:34:03 Ms. Stearns

Closing by Sponsor:

03:36:07 Rep. Kerns

Distributed to the Committee Members regarding the hearing of HB 228:
EXHIBIT(jus59a17)
EXHIBIT(jus59a18)
EXHIBIT(jus59a19)
EXHIBIT(jus59a20)
EXHIBIT(jus59a21)

03:36:55 Sen. Perry Sub-Committee appointment for HB 228

ADJOURNMENT

Adjournment: 12:37 P.M.

_____
Pam Schindler, Secretary

ps

Additional Documents:

EXHIBIT(jus59aad.pdf)

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3/17/09
BILL NO. HB228

Amendments to House Bill No. 228
3rd Reading Copy

For the Senate Judiciary Committee

Prepared by Greg Petesch
February 25, 2009 (2:32pm)

1. Page 5, line 30.
Strike: "1"
Insert: "21"
Strike: "4"
Insert: "1"

2. Page 6, line 1.
Strike: "1"
Insert: "21"
Strike: "4"
Insert: "1"

- END -

SENATE JUDICIARY
EXHIBIT NO. 2
DATE 3/17/09
HB228

A matter of perspective about House Bill 228 and citizen self defense

Two analogies are offered about the police administrators' perception of HB 228, MSSA's self defense bill.

First, there is no doubt that police administrators and prosecutors see HB 228 from a unique perspective. ***Everyone*** sees the world from a unique perspective. Police administrators and prosecutors perceive the world from their unique point of view as full-time participants in the criminal justice system.

Especially about HB 228, police administrators and prosecutors appear to be thinking only about how the bill will affect their relatively small sphere of activity, but not about how it will affect everyone else. In Montana, only about 7/10ths of 1% of the population are actively involved in law enforcement (including game wardens and detention personnel; 2/10ths of 1% with only sworn MHP, sheriffs and police - mpera.mt.gov). Police administrators and prosecutors are a tiny part of that, a minuscule subset of Montana.

Here are the two analogies:

1: Suppose two people look at an empty tube from a roll of paper towels. However, one looks at it end-on, and another looks at it from the side. Each will see, perceive and describe a much different reality.

2: This may be a better analogy. Some people describe firearms as our "liberty teeth." Teeth and firearms are surprisingly analogous. They may each be used benignly, defensively or offensively.

I often compliment my Golden Retriever, Lea, on what pretty, large, sharp, white teeth she has. But, I am NEVER concerned that she will use her formidable teeth to rip out my throat in the night while I sleep. Never. When I think of canine teeth, I think of the picture on the left.

When police administrators think analogously of canine teeth, they may perceive the picture on the right.

This illustrates the difference between how most citizen gun owners see themselves and each other, and how Montana's tiny subset of police administrators and prosecutors may see citizen gun owners.

This matter of perception and perspective may explain some police administrators' and prosecutors' demonstrated fear of HB 228 and armed citizens.

Gary Marbut, president
Montana Shooting Sports Association
Author, *Gun Laws of Montana*

SENATE JUDICIARY
EXHIBIT NO 3
DATE 3/17/09
BILL NO HB228

From: Carl Ibsen [mailto:cibsen@co.missoula.mt.us]
Sent: Friday, February 06, 2009 2:10 AM
To: suemalek@gmail.com
Subject: HB228

Sue,

I have been a law enforcement officer in Missoula for more than 36 years. I have been informed that you are interested in input on this bill.

I see no major problems with the bill, now that it's original version has been modified by the judiciary committee. I have read Betty Wing's message to area law enforcement asking for support in the fight against the bill. I cannot fight the bill because I support it. I, unlike Betty, do not see the bill as horrifying. I will address each of Betty's points, as expressed in her message.

1. A careful reading of the current concealed weapons law will show you that in most of Montana, individuals can carry concealed weapons without a permit. Current law prohibits concealed carry in cities, towns, logging camps, lumber camps, mining camps and railroad camps. The rest of the state is open to concealed carry, without any permit needed. Concealed carry is also allowed, without a permit, at your place of business and your home. The prohibition on concealed carry is quite limited.

2. The public already has the right to arrest and turn an arrestee over to law enforcement.

3. Once one rents a residence or a temporary residence (hotel/motel room) it is their abode, not the landlords, for the duration of their paid period. That is why neither a landlord nor the proprietor of a hotel/motel can give permission to law enforcement, or anyone else, to access or search a home or room rented to some other person.

4. I do not follow the apparent reasoning that displaying a firearm, like in a road rage incident, will not be a crime. It would, as it does now, depend entirely on the situation and the total incident package, which cops call the totality of circumstances.

5. The public already has a right to defend themselves. They need that right until there is a cop hired and assigned to be with each and every citizen at all

times to protect them. The chances of a cop being on scene to protect any specific person, when they need it, is extremely low. It is a right, both under the law and under the laws of nature to be able and fit to protect oneself and ones property. That is as it should be. This new wording and codification within HB228 is simply a verbalization and strengthening of that right.

I have to admit that I see an item or two within HB228 that I would prefer slightly different wording on, but not substantially different substance. These areas do not include those areas that trouble Berry.
However, there is nothing in this bill that law enforcement cannot live with and work with. I also know that I would prefer slightly different wording of many of the laws that we, as law enforcement officers, deal with. Few, if any, are perfectly worded. HB228 is not perfect, no bill or law is.
That is why so much of the code is re-worked and modified over the years.
HB228 is a good step in the proper direction.

Respectfully,
Carl C. Ibsen

C. C. Ibsen
Senior Deputy
Missoula County Sheriff's Department
200 W. Broadway
Missoula, MT 59802

cibsen@co.missoula.mt.us
Phone: 406-531-0346
Fax: 406-721-8575

On Thu, Feb 5, 2009 at 10:40 AM, David Merifield <dmerifield@co.missoula.mt.us> wrote:
Sue,

As a 14+ year veteran of law enforcement, I do not see any glaring problems with HB 228 now that the old section 5 and old section 6 have been deleted or modified.

It is not the responsibility of law enforcement, or any other government entity, to protect each and every citizen, 24hrs a day, wherever they might be, especially in their own home. Even if it were, it would be impossible to do. That responsibility falls on the individual adult citizen. This bill would help ensure that individuals will keep that right. If some choose not to exercise it, that is their choice, but we should not deny that right to those that wish to exercise it responsibly.

The first three issues that Betty expresses below, are non-issues. People have the right and responsibility to protect them selves at all times, and the public already has the ability to make private arrests.

The fourth (road rage incidents) would still be a crime, if the person unjustifiably points a gun at someone else.

The fifth issue, more freedom for the public to use deadly force in protecting their homes, is again a non-issue, in that there is already a basic right to self-defense, especially within your own home. This bill just clarifies and strengthens it.

Thank you for your time and consideration.

Respectfully,

David Merifield

Detective David Merifield
Missoula County Sheriff's Department
200 W. Broadway
Missoula, MT 59802
dmerifield@co.missoula.mt.us
(406) 258-3713 - Desk
(406) 531-0335 - Cell

Please support HB228.

I'm a retired beat cop from the murder capitol of America - inside the DC Beltway, so I understand firsthand the arguments, pro and con. I now live safely in MT with my family and the lawful means to protect them

That I would cashier my career and uproot my family should demonstrate how strongly I feel about this important issue.

I look forward to your support on HB228.

Sincerely,

Mark Riedl
Florence, MT
"Mark Riedl" <markriedl@yahoo.com>

Rep. Kerns,

Gary Marbut has asked that I provide you a statement on H.B. 228 as a past law enforcement officer.

To establish the basis of my comments, please let me explain that I am a life-long resident of Montana. I graduated magna cum laude from MSU with a bachelors degree in criminal justice and a minor in philosophy. Having served as a sworn, full-time deputy sheriff early in my career, I attended numerous courses of training at the Montana Law Enforcement Academy and subsequently taught computer, communications, and search and rescue courses there as an adjunct instructor. I received basic and intermediate Police Officer Standards & Training (POST) certification and graduated first academically in MLEA Basic 50 (basic training). Following five years as a deputy sheriff, I held non-sworn positions for 15 years with the Departments of Justice and Administration in public safety roles. Throughout most of this time, I was a member of the MSPOA, serving as a board advisor on communications issues, a standing committee member, and with distinction as the association's only civilian task force chairman.

With this background, I have developed a strong appreciation for the unabridged right to self-defense. Montana has a strong, proud history of protecting this right. H.B. 228 furthers that tradition in important and necessary ways.

The very business of law enforcement proves the necessity of an armed citizenry capable of defending both itself and others. I have observed officials of Montana's law enforcement associations predict dire consequences in testimony against practically every self-defense bill that has come before the legislature in recent years. Not only have they been proven uniformly wrong with every bill that has passed, their testimony runs counter to hard evidence and appeals to vague fears. Violent crime rates continue significantly downward trends, not coindentally with liberalized self-defense laws. Despite this evidence, some Montana law enforcement officials continue to decry every attempt to further support the right.

I cannot, nor will I, believe that the opposition to civil liberties expressed by these individuals represents the

opinion of the rank and file of Montana law enforcement. My experience working with law enforcement officers from the lowest to the highest ranks suggests that as rank increases, so generally does a commitment to restrain the right to self-defense. There are exceptions, of course, but I've invariably found myself on opposite sides from high officials of these law enforcement associations and the Department of Justice, many of whom I know very well, in legislative hearings.

I thank you for your support of H.B. 228 and ask that you look at your fellow citizens to judge their propensity to become violent criminals, rather than turn to the testimony of law enforcement administrators and high officials who tend toward an exaggerated view of criminality in the general populace, yet are unable to guarantee any individual's safety. Nor should they. The finest guarantee is the ability to defend oneself and one's family. H.B. 228 will improve Montana citizens' ability to do so.

Dan

Dan Hawkins
1821 Choteau St.
Helena, MT 59601

Members, Montana Senate Judiciary Committee

I would like to let you know that as a Reserve Deputy Sheriff of Stanislaus County, California. I had full time peace officer powers. I was responding officer to numerous calls involving gun related issues. Almost all of them involved gang members, drug dealers or users, thefts, armed robbery, and other felony offenses.

There were very few involving a honest citizen, the only ones I can recall that involved honest citizens were self defense calls where a citizen needed his gun to stave off crimes against the citizen or his family. Often times the crime was averted without actual use of deadly fore even though it was warranted. The mere presence of a gun in the hands of an honest citizen averted the crime. I can assure you that in each instance the citizen was really scared often requiring some time to be able to tell us what had happened.

I would strongly urge you to not take any action that would hinder the honest citizen the right or means of self defense. HB 228 would help the honest citizen to be able to defend him or herself in the event he or she was attacked. We have a lot of senior citizens in Montana, they are the least able to defend themselves against attack from criminals who are usually younger, stronger, and better armed. Criminals don't pay any attention to laws. Honest citizens do. Please don't hinder the honest citizen from the right of self defense.

Thank you for your consideration.

Sincerely,

Frank Vaccaro
Dillon, Montana

Members, Senate Judiciary Committee

In Support of HB 228

Dear Senators,

I have heard of the recent introduction of House Bill 228 in your state legislature. I have also heard that some police organizations are opposing this bill.

I am a working police officer in Texas. I have been a police officer for approximately 30 years. I have a Bachelor's degree in Criminal Justice and a Master's degree in Management. I currently work as an instructor in a state police academy. I would like to voice support for this bill.

I am a firm believer in every person's right to defend himself. This includes the right to have the legal authority to do so and not fear being criminally charged for doing so.

In my years of patrol experience, I have been called to the scene of many crimes. It was very rare that I made it to the scene of any crime while it was still in progress. This is why I believe people must be able to defend themselves.

I have been called to the scene of many attempted crimes where a person defended himself. This happens so often that it is not considered newsworthy by the media any longer. I have never had a case where a person defending himself hurt an innocent person though I recognize this does occur. It happens so rarely that it is still considered worthy of the national news most of the time that it occurs. This imbalance in the reporting may cause some people to think that the accidents and wrongful injuries occur more often than the successful defense does.

Two years ago, Texas implemented a law similar to what HB 228 implements for your state. We have not seen any increase in accidental shootings or wrongful injuries of innocent people. There has been a slight increase in the number of self-defense shootings where criminals get hurt. I have never yet seen an officer hurt as a result of the increased self defense use.

I may be more callous than same people, but I am honestly not as concerned about the health of the criminal as I am about the health of the victims. Self-defense laws like this help protect the lives of innocent people that would otherwise be victims of violent crime.

If there are any questions about my opinion, please feel free to contact me.

Sincerely,
Stephan Rothstein
srothstein@earthlink.net

3/13/2009

From:
Charles Woolley
424 High Country Rd.
Plains, MT 59859

To: Members of Montana Senate Judiciary Committee

RE: Section 3, HB 228

I worked as a firearms instructor/armorer at the Smith & Wesson Academy for several years (1997-1999) and was involved in the training of police, military, and civilians in the safe and effective use of firearms.

In regard to Section 3, HB228, Defensive display of a firearm, I feel that it is quite reasonable to actually define precisely what actions should be considered illegal and what actions may require use of force under Title 45.

To not do so, leaves a gray area of law and as an instructor in the proper use of concealed weapons here in Montana, makes it difficult to give specific legal guidelines to my students regarding display or verbal warnings regarding their possession of a weapon, particularly if it could prevent an attack and thus prevent employment of lethal force.

I understand that law enforcement officers may feel restricted in their ability to assess and act in a situation involving "brandishing" a weapon, however, there is an obvious difference between "brandishing" which involves reckless endangerment by waving and pointing the weapon and "display or warning" which is only a means of informing a potential assailant that the victim is armed and able to defend themselves against attack.

I believe it is not a danger to law enforcement officers in the performance of their duties to legally define what is and is not allowed. On the contrary, it seems most reasonable to have easily understood laws. I also believe it is an insult to the intelligence of these officers to insinuate that they cannot tell the difference between reckless "brandishing" and mere "defensive display" and must therefore have the latitude to arrest or use force in reaction to any display of a weapon.

Sincerely,

Charles Woolley

I, Austin Hecker, a Reserve Deputy with the Jefferson County Sheriff's Office, rise in support of HB228. I feel that the bill has been intelligently written and clarifies an individual's rights protected under the Constitution. Please vote "Yes" on HB228.

Memorandum

To: MSSA

CC: Legislative sponsor

From: Bill Szedlar

Date: 2/24/2009

Re:

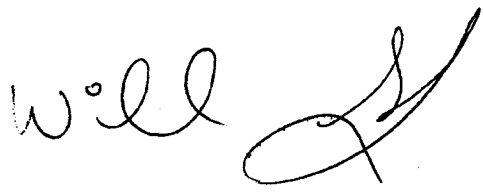
I have enclosed documents that support my past service to this country while in the armed forces and as a sworn police officer. Innocent until proven guilty is a traditional hallmark of justice in a free society. Any law that shifts the burden of culpability to the defendant in cases of self- defense until a finding of exoneration or guilt is counter culture. The Montana case involving Longstreth is a prime example.

Enclosed is also brief documentation that reinforces the fact government is only required to respond, not to protect free citizens. Only citizens in government custody (the bad guys) are guaranteed armed protection. The motto to "protect and serve" has been eviscerated and replaced with the motto "to respond and investigate". We all know that police departments are structured toward reactive versus proactive duties regarding self-defense.

The locale that I patrolled had the appalling honor of exceeding one hundred and eighty homicides a year. I worked a beat that frequently had the same store robbed twice in one shift. The irony of this is that the area (Washington DC metro) has some of the strictest anti self-defense laws in the country. Guns don't cause crime, criminals do. Likewise gun shows are statistically safer than public schools, even though schools are "gun free zones".

I recall the time that I stopped a young woman for a routine traffic violation and noticed several .22 rounds on the passenger floorboard of her vehicle. She admitted to having a gun in the car for protection (violation of Maryland law) and proceeded to tell me that her dad, a world war two vet, had told her he witnessed first hand the atrocities of citizens being "pressured" into giving up their right of self-protection by governments. I sent the tearful woman on her way without so much as a warning and told her to be thankful for such a caring father. Smiling I got back into my patrol car knowing my wife was currently in violation of the very same law, having at least a fighting chance in any threat to her survival.

Please think of your wives, daughters, neighbors, elderly, handicapped and friends when you vote to either destroy or defend "innocent until proven guilty".



SENATE JUDICIARY
EXHIBIT NO. 4
DATE 3/17/09
BILL NO. HB 228

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VIRGINIA 22030
(703) 267-1202

STATE & LOCAL AFFAIRS DIVISION
RANDY KOZUCH, DIRECTOR

TO: Members of the Senate Judiciary Committee
FROM: Randy Kozuch, Director, NRA-ILA State & Local Affairs
DATE: March 17, 2009
RE: House Bill 228 (Self-defense/Right to Keep & Bear Arms) – **SUPPORT**

On behalf of the National Rifle Association and tens of thousands of NRA members in the state of Montana, I would like to register our strong support for House Bill 228. The right of self-defense is a fundamental right. Law-abiding citizens should be afforded every opportunity to defend themselves and their loved ones, without the fear that they will be treated like criminals if they exercise the right to self-defense.

House Bill 228 is a much needed piece of legislation that provides a number of specific protections for law-abiding citizens. House Bill 228 does the following:

- Clarifies the ability of law-abiding citizens to carry a firearm in plain view and to display the firearm for harmless defensive purposes;
- Allows a person who can lawfully possess a firearm, and who doesn't use it to commit a criminal offense, to carry it concealed anywhere in the state without first obtaining governmental permission;
- Prevents landlords and hotel operators from restricting law-abiding citizens' self-defense rights;
- Clarifies in statute the existing legal precedent that there is no duty to retreat from a threat before exercising the right to self-defense, and allows a law-abiding citizen to use reasonable force in exercising the existing law that gives a private person the authority to arrest an offender;
- Ensures that self-defense claims are adequately considered during incident investigations; and
- Shifts to the state, if self-defense is asserted by a defendant in a criminal case, the burden of proving an absence of justification.

The National Rifle Association strongly supports HB 228 and urges you to vote for it when it comes before your committee for consideration. If you have any additional questions regarding this legislation, please call Brian Judy, NRA's Montana State Liaison, at (916) 446-2455.

Missoula Police Department

435 Ryman Street, Missoula, MT 59802-4297

SENATE JUDICIARY
EXHIBIT NO. 5
DATE 3/17/09
BILL NO. HB228

From the Desk of Mark Muir

Phone: (406)-552-6316 Fax: (406) 728-6690

mmuir@ci.missoula.mt.us

March 17, 2009

Senate Judiciary Committee

Re: HB 228

Chairman Perry and Committee Members,

I write you today as an eighteen year veteran of law enforcement and Chief of the second largest city police department in Montana. I urge you to vote DO NOT PASS on House Bill 228 before it leaves this committee. Sadly, this bill has returned to your committee in an insignificantly modified version from what was voted down in the 2007 session. The proponents brought it back without even taking time to consider the amendments or other progress that had been made last session. Law enforcement is not here to take anything away from gun owners, we think we are on the same side of supporting gun ownership by law-abiding citizens.

Law enforcement has endorsed alternatives bills in this session to support the principles of self defense. Police are not here asking you to prevent people using appropriate force to defend themselves or others and recognize the desire to have a Castle Doctrine type in Montana. HB 228 is poor legislation that attempts to inject change with a shotgun approach. Many of the sections of this bill already clearly exist in statute today; take for instance Section 1 (4) which declares "the lawful use of firearms for self-defense is not a crime or an offense against the state." This principle is already founded in statutes where MCA Title 45 has an entire Chapter on justifiable use of force. Other states who've passed Castle Doctrine bills still require citizens to have concealed weapons permits to carry a concealed weapon. It's a simple process and law abiding citizens can carry with safety and comfort in the law.

I train police officers in the use of force and have listened to cops from across the state and not one can give me a legal definition of defensive display of a firearm. Section 3 of HB 228 is based on this vague principle and increases the likelihood of armed conflicts between citizens and higher incident of police encountering weapons at a scene. It does this by removing the legal consequence of bringing a firearm into a situation that doesn't deserve that show of force. As example, imagine being involved in a traffic collision where you're not the party at fault. You get out of your car and upset by the crash confront the other driver. How are you going to feel when that person pulls a handgun or rifle from their car and reminds you that they have the right to defend themselves? All legal under HB228, regardless of how harmless your intent to confront the other driver.

Or maybe your daughter is the night pharmacist at the local 24 hour Walgreen. The police are actively seeking a man who has displayed a weapon in his waistband from beneath his coat on two prior robberies. Tonight the police are watching as a suspicious man walks back and forth on the sidewalk. They engage him and find he is carrying a concealed handgun in his waistband, but with the passage of HB 228 that's no longer an arrestable offense until he actually commits another robbery or other crime using the weapon. He walks away, confident that he will find another time to strike when the cops aren't out and about. Concealed weapons laws may not discourage illegal carry for the active criminal, but HB 228 goes to justify carrying at all times since it does away with any penalty unless getting caught committing another offense. If you're planning to commit a forcible felony, do you really care whether they tack on some insignificant misdemeanor charge for having a concealed weapon? Under HB 228 even a convicted felon in possession of a concealed weapon doesn't become a felony offense unless used in a crime.

So if you're still tracking with me, let's talk about cops walking up on cars with their guns drawn for "harmless defensive purposes", in my Department that is justified by only some unusual circumstances and specifically requires an officer to document that as a use of force in a full report and justify his actions. Where in HB 228 do you see any require for a citizen to justify his or her actions in a similar fashion? In my community, there would be outrage if the police walk up to every traffic violator or panhandler with their pistol drawn and held at their side, ever so careful to avoid the barrel pointing directly at someone. Would your community not feel the same ire?

There are many other aspects of HB 228 which confound the senses of everyday citizens, law enforcement officers and practitioners in the justice system. You'll have heard many of them in testimony today. I urge you to analyze carefully the risk we place people in, giving criminals the same RIGHT TO CARRY that our law abiding voters can readily do with a concealed carry permit. Don't be fooled by the idea that criminals will be afraid of the public because victims can carry – they have the opportunity to do that now and seldom is it practiced. All we do with HB228 is open the floodgates for everyone regardless of intent to carry weapons and this will give rise to conflicts, probably deadly.

Proponents of this bill have managed to strike fear in the hearts of many of your fellow legislators, afraid that other valuable legislation will be sacrificed or votes will be lost due to the powerful lobbying of the NRA. Interestingly the NRA has supported Castle Doctrine Bills in many other states, but here they have joined with a group who are pushing reason off the edge of a cliff. I fear not what the benefit of HB228 will be, but at what cost will we indulge this powerful lobby? Join your citizen majority and vote to kill HB 228, send the message to the NRA that you will not be pressured to give up reason and will stand in the way of their drive to the cliff. Vote DO NOT PASS today, before you or someone you love pays the ultimate price for playing into the hands of criminals just to please some gun activists. I'll be there to support you for doing the right thing and if you are still unsure what the right thing is, go out and get a concealed weapons permit!

Sincerely,

Mark Muir, Chief of Police
Missoula, MT

SENATE JUDICIARY
EXHIBIT NO. 6
DATE 3/17/09
BILL NO. HB228

March 11, 2009

Subject: DO NOT PASS HB 228

Members of the Senate Judiciary Committee:

I am a faculty member at Montana State University and a resident of Bozeman.

I am writing to you today to express my concerns regarding a bill you will be hearing on March 17th, HB228 entitled "Citizen Self-defense and Firearm Rights". As someone living in a Montana community I am greatly concerned with the implications of this bill. I am most concerned with the language that removes the necessity for a concealed weapons permit. It would even allow violent and convicted felons to conceal weapons without a permit. This change to law makes me uncomfortable as a citizen and would not in any way make me feel safer, as proponents of the bill are arguing.

One of the other things that concerns me most is the brandishing language that this bill adds to Montana Code. In this language anyone who feels threatened may now pull out, wave and even fire a gun. I think that legalizing this type of action is very dangerous, especially if the people brandishing and potentially firing these weapons are people without concealed weapons permits.

The argument for this legislation is that it will provide protection and safety for people in Montana; I do not believe that this legislation does either. I support safe gun ownership, but I believe that this bill moves in the exact opposite direction of responsible gun possession. I oppose this bill as a student, and as a member of the Montana community, and I strongly urge a DO NOT PASS on HB228.

Thank you for your time.

Best

Dede Taylor
dtaylor@montana.edu

SENATE JUDICIARY
EXHIBIT NO. 7
DATE 3/17/09
BILL NO. HB228

2009-R-01

Sponsors:
Justin Folsom
Blake Bjornson
Mark Eggensperger

Yes 12 No 0 Abs0

Vote Necessary: Majority

Intent: To express the Associated Students of Montana State University's opposition to House Bill 228

Whereas, HB 228, proposed by Representative Krayton Kerns and passed by the 2009 Montana House of Representatives on February 10, 2009, seeks to make many drastic and potentially dangerous changes to Montana law regarding access to and use of weapons,

Whereas, Montana State University serves as home, work, and school for thousands of students, faculty, and staff;

Whereas, the Associated Students of Montana State University (ASMSU) recognize and respect the rights of law-abiding citizens of Montana to keep and bear arms provided by the 2nd Amendment of the United States Constitution;

Whereas, current law of the State of Montana allows for citizens with a permit to carry concealed weapons;

Whereas, passage of HB 228 would allow anyone, including convicted felons, to carry concealed weapons in Montana cities and towns without a permit;

Whereas, passage of HB 228 would allow individuals to brandish a weapon without being prosecuted;

Whereas, passage of HB 228 would make it lawful to respond in self-defense with deadly force to the display of a weapon;

Whereas, passage of HB228 would switch the burden of proof to the state in self-defense cases;

Whereas, for the significant majority of the Associated Students of Montana State University, passage of HB 228 will undermine their sense of personal safety.

Whereas, a personal sense of safety is essential to Montana State University's educational mission.

Therefore, Let It Be Resolved, that ASMSU opposes HB 228, and strongly urges a do not pass on this bill.

Therefore, Let It Be Further Resolved that a copy of this resolution be sent to Governor Schweitzer, Senate Judiciary Committee, Gallatin County Legislators, President Gamble, The ASMSU Exponent, and the Bozeman Chronicle.

MISSOULA COUNTY

MISSOULA COUNTY OFFICE OF PLANNING & GRANTS

Shantelle Gaynor • Grants Administrator
435 Ryman St. • Missoula, MT 59802-4292
(406) 258-4650 • FAX (406) 258-4843
sgaynor@co.missoula.mt.us

SENATE JUDICIARY
EXHIBIT NO. 8
DATE 3/17/09
BILL NO. HB228

March 17, 2009

RE: House Bill 228

Chairman Perry and Honorable Members of the Senate Judiciary Committee:

My purpose in testifying before the Senate Judiciary Committee today is to request that you vote "NO" on HB 228. This letter is a written version of my testimony should you wish to reference it later. I work as a Grants Administrator at the Office of Planning and Grants, primarily working to build and support domestic violence prevention and intervention programs.

If enacted, House Bill 228 will threaten public safety under the guise of "clarifying" self-defense. Whereas self-defense is a critical component of many domestic violent situations, this law will create large loopholes for perpetrators of domestic violence and will have serious unintended public safety consequences.

The Missoula Office of Planning and Grants and the Crime Victim Advocate Program oppose House Bill 228 for the following reasons:

- **Allows for the brandishing of a weapon at any time without justification.** Montana's Fatality Review team has identified that firearms have been used in 70% of domestic violence homicides in the state. The men and women who choose to use guns to threaten and intimidate their partners and their children must be held accountable. As advocates, we know that a gun can be a threat in and of itself to a domestic violence victim. Allowing an abuser to legally brandish a gun simply escalates the situation. Please do not legalize this threatening and abusive behavior.

- **Provides for the carrying of a concealed weapon by anyone without a permit.** There are currently no barriers to law-abiding individuals, who obtain permits, to bring guns into public situations for the purposes of personal safety. Carrying a concealed weapon without obtaining a permit raises questions about the motive of the individual choosing to carry a weapon. We know that guns, in and of themselves, are not the problem. People who use guns unlawfully are the problem. Individuals with criminal, violent or paranoid motives, who choose to use guns, should not be allowed to be armed in the public sphere with no checks and balances. This poses a serious public safety issue.

- **Undermines 18 years of improvements to domestic violence statutes.** Domestic violence perpetrators use many tools to threaten, intimidate and harm their victims. These threats are often ugly and brutal. HB 228 shifts the investigation and prosecution of false self-defense claims, effectively allowing a partner to use deadly force as the first option as opposed to the last resort. A law such as HB 228 would all but assure victims that their partner's are telling the truth when they threaten, "I will kill you and the police will not be able to touch me. I will tell them that you were acting crazy, that you threatened me and that it was self-defense." In a situation where there are no witnesses, no other motives and an abuser who is an effective liar, there will be victims of homicide and no justice. This is not a Montana value.

This bill has the potential to decriminalize many "precursors" to violent and tragic situations. I would like to share the following scenario with you to illustrate this point:

Mike and Sarah are both 15 and attending high school. They had been dating until Mike began acting jealous and possessive of Sarah. During an argument he hit a wall near her head while yelling at her. Sarah was scared and broke up with him. Mike is distraught and said that he is going to come to school and "show her." The next day Mike pulls out the two guns he had gotten for Christmas and puts them in his coat pockets. He walks to school with the weapons consealed. He goes to the empty lot across the street from their school and waits for Sarah to show up. While waiting, he takes out the guns and waives them in the air so that everyone can see. Sarah's friends see him and are scared for her. In this post-Columbine era, they are terrified for themselves as well.

If HB 228 passes, Mike has not broken one law. Until he crosses the street, points the gun or pulls the trigger, he is perfectly within his rights to carry and brandish his weapons. This is the type of situation that we, as reasonable and just people of the State of Montana, should be able to intervene before it escalates. We need the tools that we currently have to identify a threat and defuse it. We need to be kept safe, while maintaining our already proven, strong commitment to gun rights. HB 228 is radical, does not address a current problem in the law, and creates loopholes for many dangerous and unjust situations.

Please vote "NO" on HB 228.

Thank you for your consideration,

Shantelle Gaynor

HB 288 9

SENATE JUDICIARY
EXHIBIT NO. 9
DATE 3/17/09
BILL NO. HB228

TESTIMONY
BY
George M. Dennison
President,
THE UNIVERSITY OF MONTANA
In opposition to HB 228
17 March 2009

Mr. Chairman and Members of the Committee.

Good morning and thank you for the opportunity to have this testimony read and entered into the record on behalf of the The University of Montana and its affiliated campuses — which include The University of Montana-Missoula, The University of Montana Western, Montana Tech of The University of Montana, and The University of Montana Helena College of Technology — in opposition to the adoption of HB 228.

This year marks my 19th as a member of the administration and faculty of my *alma mater*, The University of Montana. I want to stress the importance of maintaining an atmosphere on the campus and in the Missoula community conducive to safety and student learning. We hold the safety of our students as the highest priority, and we have taken concrete steps to fulfill that priority. Moreover, as I will discuss briefly, we have reason to believe that our students and their parents share that concern. Adopting HB 228 does not assist us in our efforts to assure a safe and supportive learning environment, but conflicts with that objective.

The legislation under consideration allows any person to carry a concealed weapon, regardless of misgivings about past conduct and/or probability of future transgressions. We have deep concern with the lack of a permit process in order to keep weapons out of the hands of potential offenders. In addition, I personally have serious reservations about shifting the burden of proof for self-defense from the defendant to the prosecution. Currently, the defendant must prove self-defense. If adopted, this legislation moves the burden to the State to prove that an assault did not constitute self-defense, the reverse of current procedure. This reversal has serious implications in cases of domestic violence, certainly a matter of serious concern in every community.

The University of Montana has a policy governing firearms (which includes rifles, handguns, archery equipment, bows and arrows, shotguns of any type or caliber, BB guns, and pellet guns) requiring registration and storage in authorized areas until checked out for use off campus. Failure to adhere to this firearms policy violates the campus student conduct codes. Please note that failure to register does not constitute a crime, but involves severe sanctions under the student conduct codes.

Under existing policy, if people observe someone other than a law enforcement officer with a gun on campus, they recognize a violation and call the law enforcement agency. A policy allowing people with permits to carry a concealed weapon on campus will remove the immediate alarm by undermining the assumption of a violation. Today's college students as adults have the presumed maturity to make good decisions. However, the use of deadly force requires split second judgment with little or no room for error. Access to weapons can and will lead to accidental discharge or use during a time of crisis, whether suicidal or in other situations that involve a confrontation. Allowing concealed weapons in confined and crowded spaces, such as occurs on a University campus, even if only for persons holding permits, poses huge challenges with regard to unplanned, unexpected and, unauthorized uses. I doubt that anyone wants these kinds of situations to occur.

Recent studies focused on the views of prospective students and their parents show clearly the importance of campus safety as paramount in their minds. Armed, untrained people on campus will undermine rather than promote or encourage safety. While some may find that view objectionable, the studies indicate the widespread acceptance of it.

Consider if you will, two final points:

Currently more than 1,200 concealed weapon permits exist in Missoula County, held by persons with an average age of 51 years old. The life experience of these permit holders certainly exceeds that of an average college student.

The Montana Law Enforcement Academy prohibits students from carrying weapons – students who currently have the status as law enforcement officers legally authorized to carry a concealed weapon, selected on the basis of very strict criteria. I believe it makes good sense and reflects prudent judgment to follow the lead of law enforcement trainers in terms of how they conduct business and classes at the Academy.

With all due respect, I strongly request that you oppose HB 228.

Thank you very much for your attention.

GMD/cc
Dendoc1513

10

SENATE JUDICIARY
EXHIBIT NO. 10
DATE 3/17/09
BILL NO. HB228

3/17/2009 Testimony In Opposition to HB 228

Mr. Chair and Members of the Committee,

A couple of minutes into the movie "Tombstone," Wyatt Earp and his brothers hear a gunshot in the bar and two men come running out.

"You raise that arm..." one man says. The other man reaches for his gun and is immediately shot dead.

The sheriff approaches the scene,

"What was that about?"

"I won a hand, he called me a cheater." he replied.

"Hand over that gun." the sheriff says

"It was a fair fight, it was legal."

"Sorry boys that's the rules."

Ah, the Wild West. This may just be a movie, but with the passage of HB 228, shoot outs no longer have to be a fantasy.

The Citizen Self-defense and Firearm Rights" has implications that are disconcerting to say the least. The bill removes the necessity for a concealed weapons permit. It allows violent felons and sex offenders to carry concealed weapons without a permit, and entitles an individual, if they feel threatened, to produce and fire a gun in public.

Perhaps most damning, HB228 shifts the burden of proof for self-defense from the defendant to the prosecution. Currently, the defendant has to prove self-defense. If this bill passes, the state has to prove that an assault was not a case of self-defense. Think of how this would play out in cases of domestic violence; without any direct witnesses, the state would be hand tied to prosecute a spouse for violently attacking, injuring, or killing their partner.

In the heydays of the Montana territory, cowboys ran wild, hanging and shooting innocent victims for crimes they did not commit. There are some who wish to bring back such days of vigilante justice, some who forget what justice without jury looks like. HB228 permits this warped and arcane behavior; self professed vigilantes openly yielding guns and roaming public streets, ever on the alert for any subtle threat. I warn you, think twice before you raise that arm… lest you be shot out of self-defense.

Thank you for your attention, and as two students from the University of Montana we urge a do not pass.
Dustin Leftridge and Sean Morrison

HB 228
Shoot to Kill

March 17, 2009
Senate Judiciary

SENATE JUDICIARY
EXHIBIT NO. 11
DATE 3/17/09
BILL NO. HB228

- no problem w/ MTF gun laws
- Campbell's statement ≈ MTF

Chairman and members of the committee, I am Jamee Greer representing the Montana Human Rights Network.

Thank you for the opportunity to address the issue of public safety this morning.

Current law already defines the legitimate use of lethal force, and it does so to prevent tense and toxic situations from escalating into irreparable harm to another. This bill will allow that the use of lethal force be the first option, instead of a last resort. The bill allows anyone "who is lawfully in a place or location" to shoot to kill if they feel "threatened with bodily injury." And it leaves it up to the shooter to decide at home, on the street, in the supermarket, or anywhere else, when to use lethal force. Sometimes the only other witness to the events will be dead and unable to give their view of what happened, making the shooter the lone judge, jury and executioner.

The Network, our membership and allies ask you to please oppose House Bill 228.

JAMEE GREER, LOBBYIST
MONTANA HUMAN RIGHTS NETWORK

SENATE JUDICIARY
EXHIBIT NO. 12
DATE 3/17/09
BILL NO. HB228

OFFICE OF THE CITY ATTORNEY

435 Ryman • Missoula MT 59802
(406) 552-6020 • Fax: (406) 327-2105
attorney@ci.missoula.mt.us

March 17, 2009

RE: House Bill 228

Chairman Perry and Honorable Members of the Senate Judiciary Committee:

My purpose in writing is to request you to vote Do Not Pass Senate Bill 228. I have prosecuted offenders on behalf of the people of the state of Montana for over 20 years. I am the Assistant City Attorney for the City of Missoula.

If enacted, Senate Bill 228 will make three major changes in the way violent offenders are investigated and prosecuted. First, HB 228 changes the duty of who must investigate a claim of self defense and who must prove, during a trial, that self defense was not an issue. Second, HB 228 decriminalizes carrying a concealed weapon. Third, HB 228 states that waiving a gun in the air for a "harmless defensive purpose", so long as the gun is not pointed at a person, is not an offense.

The state should fully investigate criminal offenses. The state should not have to investigate all possible defenses nor should the state have to disprove defenses. In any criminal case, the state must prove, beyond a reasonable doubt, all elements of the offense. Under current law, self defense must be raised by an offender who must present sufficient evidence to raise a reasonable doubt of his guilt. State v. Miller, 1998 MT 177, para 23 (1998). HB 228 requires law enforcement to investigate self defense if it "appears" or it is "alleged" that self defense is an issue. HB 228 also shifts the burden of proof to disprove the claim of self defense to the people of the state of Montana.

This bill will conditionally eliminate carrying a concealed weapon as an offense. Carrying a concealed weapon is currently an offense in Montana. The gravamen of that offense is that 1. Having a weapon concealed upon one's person can quickly escalate a minor disagreement into tragic, even lethal violence. 2. It is a simple procedure to get a concealed weapon permit and folks who want to carry a concealed weapon can complete that procedure. HB 228 decriminalizes carrying a concealed weapon unless the offender uses the weapon to commit another offense at the same time.

A person who waives a gun in the air may cause other people to be terrified. HB 228 states that "holding a firearm in a position so that the firearm does not point directly at another person" may not be charged as an offense. One must assume that a person could then waive a firearm up in the air across from a school, across from a government building or across from their estranged wife's home. As long as the firearm is shown for a "harmless defensive purpose" and not pointed directly at another person, brandishing it "needs no justification for the display". This change in the law would severely hamper law enforcement from taking proactive action in extraordinarily frightening and volatile situations.

These changes are not needed in Montana's laws. These changes will hamper law enforcement and prosecutors in investigating and prosecuting violent offenders. These changes will endanger Montanans. Please vote Do Not Pass on HB 228

Sincerely,

Judith L. Wang
Assistant City Attorney

SENATE JUDICIARY
EXHIBIT NO. B
DATE 3/17/09
BILL NO HB228

March 17, 2009

To: Senate Judiciary Committee
From: Maria Martin
Re: HB 228 – "An Act Preserving and Clarifying Laws Relating to the Right of Self-defense and the Right to Bear Arms"

Good morning, Mr. Chairman and Members of the Senate Judiciary Committee. For the record, my name is Maria Martin. I am the Yellowstone Prevention Coordinator of Domestic and Sexual Violence Services of Carbon County, Vice Chairman of the Billings Area Family Violence Task Force, and a member of the Montana Coalition Against Domestic and Sexual Violence. These organizations all work to educate our communities, prevent violence, and serve victims of domestic and sexual violence. I rise in opposition to House Bill 228 sponsored by Representative Kerns.

Please consider the serious ramifications this has for prosecution of Domestic Violence cases. If this bill is enacted, the accused can plead the gun was used in self-defense, the burden of proof goes to the Prosecuting Attorney, it will be nearly impossible to prove that the gun was not used in self-defense, the case will be lost, and the government using our tax dollars will be required to pay the Defense Attorney's expenses. Prosecuting Attorney's will try a Domestic Violence case with a gun involved only once with HB 228 in place. When they know they cannot successfully prosecute and are left with the legal expenses, they will no longer prosecute Domestic Violence cases that involve guns. These cases are the most dangerous as this continuum leads to homicide.

I personally was assaulted with a gun, knife, physical violence, coercion, and threats to kill my children with the gun. After three and one half years of legal proceedings, the defendant (an attorney) was sentenced to 61 years in prison. 20 years of this sentence was given because of the use of a gun during the assault. If HB 228 had been in place at that time, I imagine my three children and I would be another homicide number for our state's Domestic Violence Statistics. We cannot allow this bill to pass. HB 228 will take the State of Montana back to an antiquated level regarding service to victims of Domestic Violence.

The Yellowstone County Prosecuting Attorney and the Billings Police Chief both oppose this bill. Please support their opposition of this bill.

I urge you to oppose HB 228. Thank you for your time and attention. If you have questions, I am available to provide further information.

Maria Martin
304 Tabriz Drive
Billings, MT 59105
ksuwildcat79@msn.com
(406) 690-8619

EXHIBIT NO. 14
DATE 3/17/09
BILL NO. HB228

PLEASE VOTE NO!!! OPPOSE HB 228 - Citizen Self Defense and Firearms Rights

- ✓ HB 228 is NOT good for victims of domestic or sexual violence in Montana. Proponents of this bill have alluded to the fact that the self defense provisions are beneficial for victims of domestic violence. NOT TRUE! HB 228 proposes an overhaul of our current criminal justice system by asserting that self defense can be used in any criminal action and puts the burden of proof to prove otherwise on the State.

- ✓ Domestic violence perpetrators will use this new presumption of self defense to justify their use of force, threats, or homicide by blaming the victim and arguing that they were provoked - whether by fear or use of force from the victim. Perpetrators will use this proposed law to avoid punishment.

- ✓ In the limited number of cases where a victim of domestic violence is forced to protect themselves by seriously injuring or killing their partner, they can already use existing law that allows for justifiable use of force (45-3-102) and use the affirmative defense of self defense.

- ✓ Using domestic violence victims as the reason for this bill is disingenuous. Any minimal benefits are far outweighed by the serious implications of this bill (and all of its problematic new sections of law) for victims of domestic violence and other victims of crime.

- ✓ This is NOT a political issue - this is a public policy issue. The changes to law included in HB 228 are significant and far-reaching. The implications of HB 228 threaten public safety.

- ✓ FACT: A gun is the weapon most commonly used in domestic homicides. In fact, more than three times as many women are murdered by guns used by their husbands or intimate acquaintances than are killed by strangers' guns, knives or other weapons combined. Contrary to many public perceptions, many women who are murdered are killed not by strangers but by men they know.

- ✓ FACT: Access to firearms increases the risk of intimate partner homicide more than five times more than in instances where there are no weapons. In addition, abusers who possess guns tend to inflict the most severe abuse on their partners.

EXHIBIT NO. 14
DATE 3/17/09
BILL NO. HB228

Prepared by the Montana Coalition Against Domestic and Sexual Violence
www.mcadsv.com

SENATE JUDICIARY
EXHIBIT NO. 18
DATE 3/12/09
BILL NO. HB228

The Associated Students of The University of Montana
Resolution Regarding HB 228
March 11, 2008
Senate Bill Number SB 46-08/09
Authored by: Siri Smillie, ASUM Vice President
Trevor Hunter, ASUM President

Whereas, the University of Montana serves as home, work, and school for thousands of students, faculty, and staff;

Whereas, the Montana Board of Regents have a policy prohibiting the carrying of concealed weapons on Montana campuses;

Whereas, the Associated Students of The University of Montana (ASUM) recognize and respect the rights of law-abiding citizens of Montana to keep and bear arms provided by the 2nd Amendment of the United States Constitution;

Whereas, the current law of the State of Montana allows for citizens with a permit to carry concealed weapons;

Whereas, HB 228, proposed by Representative Krayton Kerns and passed by the 2009 Montana House of Representatives on February 10, 2008, seeks to make many changes to Montana law regarding access to and use of weapons,

Whereas, passage of HB 228 would allow anyone, including convicted felons, to carry concealed weapons in Montana cities and towns without a permit;

Whereas, passage HB 228 allows individuals to brandish a weapon without being prosecuted;

Whereas, HB 228 makes it lawful to respond in self-defense with deadly force to the display of a weapon;

Whereas, students have the right to feel safe on campus and in their communities;

Therefore Let It Be Resolved, that ASUM oppose HB 228;

Therefore Let It Be Further Resolved, that the ASUM Lobbyist will work to defeat HB 228.

Passed by Committee: March 7, 2008

Passed by Senate: March 11, 2008

Committee Chair
Andrew Dusek

Chair of the Senate
Siri Smillie

On behalf of the international students of the University of Montana, I would like to speak to the concerns HB 228 brought upon us.

The University of Montana is a home for over 300 international students from over 50 counties. Most of us, who are studying in the four year programs and exchange programs here at the U of M, chose the University of Montana as the place surrounded by friendly people and primarily, safe Missoula community. I and hundreds of more international students compared crime rates across universities, before choosing to come here.

It is crucial for our families, parents, brothers and sisters to know that we, as students who are miles away from our homes, are safe on campus and in the community. That is why my parents from Kazakhstan and hundreds of other parents from other counties chose to send their children to Missoula. HB 228 will directly affect our families in many counties across the globe.

With HB 228, you would take away this safety and comfort bubble that current international students live with on campus and in the Missoula community. You would scare prospective international students, who would not put the University of Montana on their list of choices. And with such end results, you will see how diversity will quickly start disappearing from the University of Montana campus.

Again, look at what HB 228 does and think about how this is affecting not just the Missoula community, college campus community, in-state students, out-of-state students, but also how this is affecting people in different parts of the world.

Thanks,

Adina Kaliyeva

If you have any questions, please feel free to call me at (406) 880-1911

March 16, 2009

Chairman Perry and Members of the Senate Judiciary Committee,

My name is Siri Smillie and I am a lifelong resident of Montana, currently a student at The University of Montana, and serving as the Vice President of The Associated Students of The University of Montana (ASUM). Growing up in Billings, with friends and relatives who hunt and value their right to keep and bear arms, I believe that Second Amendment Rights are about as sacred of a Montana value as one will find. However, House Bill 228 goes far beyond guaranteeing those Second Amendment rights to Montana citizens.

I strongly urge you to oppose HB 228 – Citizen self-defense and firearm rights, in my capacity as a resident of Montana and also as a student leader at one of our state's flagship public universities. As it stands, the process for obtaining a concealed weapons permit prohibits convicted felons, as well as registered violent and sexual offenders, from legally carrying concealed weapons. I will not feel safe in my own state and in my own hometown if I know that these types of people may be hiding a knife or gun under their coat pocket. As law enforcement and public attorneys have noted, only when these criminals use the weapons they are concealing may they be charged with a crime. This does not constitute crime prevention, but in fact makes it easier for hot-tempers to flare and result in violence and in some cases, lethal violence.

Recently, our student senate had a lengthy discussion about HB 228 and its implications in the everyday lives of students – both those from Montana and those who come to the University from out-of-state, as well as international exchange students. Overwhelmingly, the ASUM Senate opposed the bill, for reasons that varied from personal experiences with domestic abuse, living in urban areas with high crime rates, and an overall fear that the law may open a Pandora's Box that excuses criminal activity and makes it difficult or impossible to prosecute violent offenders. When parents send their children of to college, their number one concern is the safety of their children who are no longer under the watchful and protective eye of their parents.

Students are also entitled to feel safe in the communities they choose to learn in. No other state has laws as broad as this legislation, and if HB 228 becomes law, current students will be inclined to move to schools in other states, or prospective students may not choose to come here at all. This would be a great loss to our campus and our state. Again, I ask you to **please oppose HB 228**.

Sincerely,

Siri Smillie
ASUM Vice President
asum.vicepres@mso.umt.edu
406.243.2037 (w)
406.698.6729 (c)

Montana Associated Students of the Montana University System

March 17, 2009

Chairman Perry and Honorable Members of the Senate Judiciary Committee,

My name is Trevor Hunter and I have the privilege of serving as the President of the Montana Associated Students (MAS) of the Montana University System as well as President of the Associated Students of the University of Montana (ASUM). For those of you who may not be aware, MAS is the combined student governments of the eleven campuses of the Montana University System, representing over 40,000 students. MAS advises the Board of Regents regarding matters that directly and indirectly affect Montana students as well as works collaboratively with the Office of the Commissioner of Higher Education.

I write to you today to express my opposition to House Bill 228, short titled "Citizen Self-Defense and Firearm Rights". On March 11th, the ASUM Senate voted to oppose HB228 because of the possible implications and unforeseen effects this bill may have on the communities in which students live while pursuing higher education in the State of Montana. Additionally, the ASMSU Senate voted to oppose HB228 on March 12th. It is clear that students around the state are realizing the wide sweeping changes to Montana Code and case law that HB228 could have.

I was raised in Kalispell, MT and have had a healthy respect for the 2nd Amendment my entire life, while also enjoying recreation trap and skeet shooting sports in the spring. I believe that HB228 stretches far beyond the confines of access and rights to firearms, rather perceivably moving towards encouraging violence and overdramatically providing for a citizens right to self-defense. Montana currently has an effective and responsible system in place for allowing for the concealment and carry of weapons through its application and screening process, which will be removed according to "New Section 3" of HB228, allowing anyone to carry and conceal a weapon, including felons (45-8-316). This section even allows a citizen to brandish a weapon for "defensive" purposes by "holding a firearm in a position so that the firearm does not point directly at another person" – this goes way beyond the confines of defense; this is pure aggression and offense.

From a students' perspective, this bill is even more troublesome. As students, we have a right to feel safe in our communities while attending one of Montana's University's, College of Technology, or Community Colleges. This bill will create a community that allows its citizens to conceal and carry weapons (45-8-316), brandish weapons for "defensive" purposes (new section 3), and gives citizens the right to fight and use deadly force if necessary (new section 2). I full heartedly believe that this bill will have a detrimental effect on the number of out-of-state, or in-state for that matter, students who choose to come to school in Montana.

It is especially troublesome to me to see groups such as the Montana Association of Chiefs of Police, the Montana Police Protective Association, the Montana County Attorney's Association, and Montana Sheriff's and Peace Officers Association, among many others, actively opposing a bill of this nature. These groups represent the people who are either designed to protect us and defend us, on the streets or in courts, as Montana citizens and it is truly worrisome when they oppose HB228 – to me, this shows just how broad, unnecessary, and over-reaching this bill is.

I understand the intent of this bill to be providing for a healthier interpretation of the 2nd Amendment and gun rights in general, but I would argue that Montana has a strong history of supporting gun rights and access, and this bill simply takes the issue too far. **I respectively urge a NO vote on HB228**. Thank you for your careful consideration.

Regards,

Trevor Hunter
MAS President

University of Montana
Missoula, MT

Montana Tech
Butte, MT

Montana Western
Dillon, MT

Montana State University
Bozeman, MT

Montana State University
Billings, MT

Montana State University - Northern
Havre, MT

Dawson Community College
Glendive, MT

Flathead Valley Community College
Kalispell, MT

Miles City Community College
Miles City, MT

Great Falls College of Technology—MSU
Great Falls, MT

Helena College of Technology—UM
Helena, MT

Good morning. For the record, my name is Mary Martin. I am a student at the University of Montana, and am involved in the Associated Students of the University of Montana, Delta Gamma sorority, Davidson Honors College, Alpha Lambda Delta Honors Society member, Teaching Assistant for an Anatomy and Physiology lab, Science Fair judge, and Exercise Science Club member. I would like to show my opposition to HB 228.

I represent many students at the U not only because of ASUM, but because of my active involvement across campus. I also represent students that have dealt with domestic violence.

Despite the fact that it looks like my life is put together, a few years ago that wasn't the case.

My family and I are victims of domestic violence. When you see us, you have no clue. We look like a normal family with a roof over our heads and a healthy drive to do too much with our time.

But over Easter weekend, 2005, my life and my family's were threatened. My mom had been seeing a man that seemed nice enough; he even worked in a law office. But that weekend he snapped. He'd been slowly isolating my mom from contact with any of her friends, and one of her acquaintances called that morning. Our life soon became a degree of hell very quickly. At the time, I was 16 years old. My two sisters were 14 and 6 years old.

The man stormed out of the house in a rage to his apartment, and my mom soon followed him to talk to him. I really didn't think much of it because people get into fights sometimes. I was only thinking verbal fights, however. That week he threatened my family's lives, and assaulted my mom.

She finally called the police, got him arrested, and pressed charges. It was a very long process to actually get him into prison. He finally is, and she actually sleeps at night now. He got 61 years in prison, 20 of which were because he was using a gun when he assaulted my mom and threatened her family.

Frankly, what concerns our family right now is that if this bill passes, people that find themselves in this type of situation won't be able to press charges. This bill allows the offender to say that the gun was present for self defense. Many people are under the misconception that it would allow the victim to say that a weapon was present for self defense; however, victims can already do so through laws already enacted.

I would also like to address how the prosecuting attorney's office would handle such violent cases in the future. The prosecuting attorney's office would be charged with proving that the gun was not used in self defense by the offender. There is not a high success rate projected for this, as resources are extremely limited. If the case is not won by the PA, the government (aka tax dollars) pays the defense attorney's fees. Most likely, the PA would only take one of these cases after the bill is passed just to prove the low success rate and the high price tag.
The PA would then decline to press charges for clients if a gun is involved in a domestic violence case. **These are some of the most serious cases that can ultimately progress into homicides**. Why wouldn't we want to protect these people and their children?? The serious

ramifications need to be considered when looking at the bill from a domestic violence victim's eyes.

As I am a student as well, I'd like to address the student opposition to this bill. At our most recent ASUM meeting, we had a campus safety officer come and talk to us, and he ended up addressing this bill for some of it. He stated that, "we didn't need to worry about it because it doesn't affect students." WRONG. Just because guns are not allowed on our campus right now does not in any way mean students aren't affected! About 80% of students at the UM live off campus. And if a student does live on campus, **it doesn't mean that they stay on campus 24/7.** Guns will be carried more by more people if this bill is passed. It is a basic case of bringing a knife to a gun fight. If someone knows that another person is carrying a gun, they won't feel safe unless they have one too. The right to carry a gun is a privilege. I am not against guns and gun rights despite my past encounters. I grew up in Montana, and my family hunts. However, there is no point to having anyone walk around on the street of a populated city with a gun. In this state, we use guns to hunt and protect our families.

Please consider opposing this bill. I cannot image why it has gone through one body of legislation without getting killed. Our student government found many problems with it just in a half hour discussion. Do not be fooled by those saying it is a "pro-guns" bill. It is not.
Please oppose this bill. Thank you for your time and attention.

JUDICIARY
EXHIBIT NO. 16
DATE 3/17/09
BILL NO. HB228

Members of the Senate Judiciary Committee:

My name is Russell O'Leary and I am a student at Montana State University (MSU) living in Bozeman and a permanent resident of Butte, Montana. The purpose of this letter is to express my concerns in regard to a bill you will be hearing on March 17th, HB228 entitled "Citizen Self-defense and Firearm Rights".

I would like to give you a brief background on myself so you can understand that my concerns are not founded on ideology but rather the safety of residents of this state and students of MSU. I grew up on a ranch outside of Butte and have been around firearms of all types my entire life. The Second amendment has always been important in my family as I am an avid shooter and sportsmen. I took hunters safety when I was 12 and have traveled all around the state enjoying my rights. Recently I purchased a sidearm and I am currently in the process of acquiring a concealed carry permit.

That being said, I am deeply concerned about the language in this bill. Removing the requirement for a permit and therefore allowing anyone to carry a weapon in public in a concealed fashion without any formal firearms training opens the door for accidents. Ill informed and unpracticed citizens carrying sidearms absolutely does not make me feel safer.

Another concern centers around the language in this bill that allows for brandishing the sidearm when threatened. College students and other citizens do not want or need this right. College age parties already have a tenancy get out of hand when fights break out. Allowing this type of behavior will only lead to the escalation of fights to a level that is truly scary.

This bill is filled with language that I feel very uncomfortable with. Law abiding citizens already have the rights they need to protect and defend themselves. I oppose this bill as a student, a gun owner, and as a member of the Montana community, and I strongly urge a DO NOT PASS on HB228.

Thank you for your time.

Regards,

Russell O'Leary

Bozeman, MT

SENATE JUDICIARY
EXHIBIT NO. 17
DATE 3/17/09
BILL NO HB228

DECLARATION BY LAW ENFORCMENT OFFICERS, AND CITIZENS OF LEWISTOWN AND FERGUS COUNTY WHO ARE OPPOSED TO PASSAGE OF HB 228

TO: SENATE JUDICIARY MEMBERS

FROM: CITIZENS AND LAW ENFORCEMENT OFFICERS ROUNDUP AND MUSSELSHELL COUNTY, MONTANA

RE: OPPOSITION TO HB 228

Dear Senators:

The undersigned individuals, who are citizens and law enforcement officers in Central Montana strongly oppose passage of HB 228, which is entitled, "An Act Preserving and Clarifying Law Relating to the Right of Self-Defense and the Right to Bear Arms". We oppose the bill for many reasons, a few of which we note as follows:

We believe this law is a BAD IDEA, and will place law enforcement officers and citizens in unnecessary risk of death or injury from persons bearing firearms.

The bill presumes to fix a problem that does not exist.

The bill sanctions the display or showing of a firearm for a "harmless defensive purpose". When is the showing or displaying of a firearm "harmless"? Such actions, or showing or displaying a firearm will tend to escalate confrontations.

Thank you for your consideration of our comments:

CENTRAL MONTANA LAW ENFORCEMENT OFFICERS:

Name	**Law Enforcement Job Position**
	Sheriff
	citizen
	Chief Deputy
	Deputy Sheriff
	Undersheriff

	DEPUTY SHERIFF
	R-DEPUTY
	DEPUTY SHERIFF
	DEPUTY SHERIFF
	PROBATION & PAROLE
Barb Halverson	Reserve Deputy
Kent Espe	Musselshell / Golden Valley County Attorney
Susan M Pallas	Golden Valley Reserve Deputy

CENTRAL MONTANA CITIZENS:

Name:	City/Town of Residence
Kerry Hoheisen	Roundup, MT
Karen Lykke	Roundup, MT

I write in opposition to House Bill 228. This bill's stated purpose is to codify the castle doctrine and clarify laws about self-defense. Unfortunately, it creates more questions than it clarifies and it might also rewrite the last thirty years of justifiable use of force law in Montana.

The First Section is titled the Purpose section. It accurately lists our constitutional rights but then under section(5) requires prosecutors to disprove self defense. It is unclear whether this provision as stated in the "Purpose Section" is intended to overturn the last thirty years of Montana criminal cases. Generally, a "Purpose" section of a bill does not contain substantive provisions of law. Additionally, if it is intended to change the current statutes on self defense then why does it not identify the affected statutes and specifically address the effect?

Section 3 Defensive display of firearm not offense. Theoretically, this is the main purpose of the bill. Currently, Montana law allows for the use of a firearm or display of a firearm as self defense. One of our legislators made a statement last week to the effect of "[w]hy do we need general statewide legislation when no state-wide problem exists" Applying the logic then "why do we need to rewrite our criminal self-defense statutes when no proponent has presented any case whatsoever where any one was wrongfully prosecuted under the current code?" Does this legislation solve a real problem?

Section 5. Firearms not to be destroyed. The intent of this section is unclear. Most firearms that come to the sheriff's office are either possessed by a convicted felon or the owner is subsequently convicted of a felony for using the firearm. Either way the sheriff usually knows who the owner is. So under the proposed language of this bill the firearm can be destroyed. What is the point of the law? Additionally, if it is the intent to prohibit the destruction of all firearms and require that they be resold, does that include broken, or defective arms? What of the Saturday night specials, gang weapons or junk?

Section 6 Landlords and tenants. Under this proposal, as a landlord or hotel owner you can not prohibit firearms on your property. I am not sure how often this comes up but the devil is in the collateral applications. Does this mean that the group-home here in Roundup can not prevent young adults from keeping a firearm in their rooms?

Section 8 Carrying concealed weapons. This proposed law would make a concealed weapon unlawful only if "using it to commit a criminal offense." The reality is that prosecutors are going to charge the felony that was committed with the weapon and not the misdemeanor concealed weapon violation. Because of that, this provision becomes essentially meaningless. Also, Proponents say the permit process would still be there. If carrying a concealed weapon is not a crime then why would we need a permit. Does this statute amend the permit law? Is it intended to repeal the permit law? Additionally, our current concealed weapon statute prohibits felons from possessing a concealed weapon, despite what its authors say, this bill removes that

provision. It makes it only a crime if "using [the concealed weapon] to commit a criminal offense." Wouldn't it be better to keep concealed weapons out of the hands of violent felons before they commit another crime.

Ultimately, it is the Legislature's job to pass laws that are clear and easy to interpret. The law must be clear for people to understand but just as important is that the law be clear for law enforcement and the prosecutors to understand and enforce. All the "mights" and "maybes" will tie up courts and prosecutors for years to come, that maybe our job.
But keep in mind every case also has an accused person who's life is put on hold while the courts sort it out.

It is unfortunate that this bill has so many tangents, self interests and is so poorly drafted and convoluted that the substance of the bill gets lost. This exact bill was proposed in the last legislative session and was defeated because it was poorly drafted. Rather than redrafting and fixing the language the sponsor just resubmitted it this year. If Montana wishes to debate the issue of displaying a firearm as self defense, then by all means focus the debate on that important issue, but lets not convolute the issue with ambiguous provisions.

Kent Sipe

Musselshell/Golden Valley County Attorney

DECLARATION BY LAW ENFORCMENT OFFICERS, AND CITIZENS OF LEWISTOWN AND FERGUS COUNTY WHO ARE OPPOSED TO PASSAGE OF HB 228

TO: SENATE JUDICIARY MEMBERS

FROM: CITIZENS AND LAW ENFORCEMENT OFFICERS OF LEWISTOWN AND FERGUS COUNTY, MONTANA

RE: OPPOSITION TO HB 228

Dear Senators:

The undersigned individuals, who are citizens and law enforcement officers in Central Montana strongly oppose passage of HB 228, which is entitled, "An Act Preserving and Clarifying Law Relating to the Right of Self-Defense and the Right to Bear Arms". We oppose the bill for many reasons, a few of which we note as follows:

We believe this law is a BAD IDEA, and will place law enforcement officers and citizens in unnecessary risk of death or injury from persons bearing firearms.

The bill presumes to fix a problem that does not exist.

The bill sanctions the display or showing of a firearm for a "harmless defensive purpose". When is the showing or displaying of a firearm "harmless"? Such actions, or showing or displaying a firearm will tend to escalate confrontations.

Thank you for your consideration of our comments:

CENTRAL MONTANA LAW ENFORCEMENT OFFICERS:

Name	**Law Enforcement Job Position**
[signature]	CHIEF OF POLICE, LEWISTOWN POLICE DEPT
[signature]	POLICE OFFICER, LEWISTOWN P.D.
[signature]	LT., LEWISTOWN POLICE DEPT
[signature]	Sergeant, Lewistown Police Department

CENTRAL MONTANA LAW ENFORCEMENT OFFICERS IN OPPOSITION TO HB 228:

Name	Law Enforcement Job Position
[illegible]	[illegible]
Robert F. Hartford	School Resource Officer - Lewistown P.D.
[illegible]	Sgt Lewistown LPD
[illegible]	Police officer LPD
[illegible]	Lieutenant Fergus County Sheriff's Dept.
[illegible]	Sgt, Lewistown P.D.
[illegible]	Police officer, Lewistown P.D.
[illegible]	Police Officer, Lewistown P.D.
[illegible]	Deputy Fergus County Sheriff's Dept
[illegible]	Police officer, Lewistown P.D.
[illegible]	Captain, Lewistown P.D.
[illegible]	Deputy Sheriff Fergus County Sheriff's Dept
[illegible]	DISPATCHER CT MT 911 DISPATCH CENTER LEWISTOWN PD
[illegible]	Dispatcher Lewistown PD
[illegible]	Dispatcher Lewistown PD

CENTRAL MONTANA CITIZENS IN OPPPOSITION TO HB 228:

Name:	City/Town of Residence
Jacqua Huston	Lewistown MT
Carol Klang	Lewistown, MT
Carla Samuelson	Hobson, MT
Sonja Yanek	Lewistown MT
	Lewistown MT
	Lewistown MT

PRESIDENT
Daryl Anderson
Libby, MT 59923
(406) 293-4112

PAST PRESIDENT
Dennis McCave
Billings, MT 59101
(406) 208-0526

SENATE JUDICIARY
EXHIBIT NO. 18
DATE 3/17/09
BILL NO. HB228

SECRETARY-TREASURER
Tony Harbaugh
1010 Main Street
Miles City, MT 59301
Office: (406) 874-3320

ADMINISTRATIVE OFFICE
34 West Sixth Ave.
Helena, MT 59601
Phone (406) 443-5669
Fax (406) 443-1592

Sheriffs & Peace Officers Association

March 17, 2009

To: Chairman Perry and Members of Senate Judiciary Committee.
Fr: Jim Smith
Re: House Bill 228. Testimony in Opposition.

I was asked by some members of the House Judiciary Committee to prepare a little history and background on the concealed weapon & gun legislation introduced over the last several years. I did some research on that subject, which I believe might also be of interest to the members of the Senate Judiciary Committee.
One note of caution: my personal involvement with the issue goes back to 1997. The LAWS only goes back to 1999. I understand from testimony of the proponents of HB 228 that concealed weapon legislation was first introduced in Montana in 1989.

1997. HB 429. Intro'd by Rep. Wells. Effectively eliminated the Concealed Weapon Permit requirement by greatly expanding the number of individual exempted from the requirement to obtain a concealed weapon permit. HB 429 was tabled in House Judiciary.

1997-1999. 'Consensus Group' works on revisions to CCWs. Information attached.

1999. SB 186. Intro'd by Sen. Wells. Revisions to CCW Law. Identified 'prohibited places' (basically included banks, bars and public buildings).
1999. HB 459. Intro'd by Rep. Bob Clark. CCW Reciprocity Agreement with other states.
Both of these 1999 bills passed and were signed into law.

2001. HB 202. Intro'd by Rep. Davies. CCW & public employees. Tabled in House Judiciary Committee.
2001. SB 18. Intro'd by Sen. O'Neill. Drivers App. Firearm purchase check. Missed Transmittal.

2003. SB 184. Intro'd by Rep. Butcher. Lifetime CCW permits. Tabled in House FWP Committee.

2005. HB 693. Intro'd by Rep. Wells. Citizen Right to Self Defense. Died On House Floor.

2007. HB 340. Intro'd by Rep. Wells. Citizen Right to Self Defense. Tabled in Senate Judiciary.

Copies of these bills have been given to Pam Schindler, Senate Judiciary Secretary.

I think the lesson here is that the agreements reached between 1997 and 1999, which resulted in SB 186 and HB 459 being introduced and passed in the 1999 Session have stood the test of time fairly well. Subsequent legislatures have resisted all attempts to amend the current law.

45-3-101. Definitions. (1) "Force likely to cause death or serious bodily harm" within the meaning of this chapter includes but is not limited to:

(a) the firing of a firearm in the direction of a person, even though no purpose exists to kill or inflict serious bodily harm; and

(b) the firing of a firearm at a vehicle in which a person is riding.

(2) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

History: En. by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, .

Provided by Montana Legislative Services

45-3-102. Use of force in defense of person. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or another or to prevent the commission of a forcible felony.

History: En. by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, .

Provided by Montana Legislative Services

45-3-103. Use of force in defense of occupied structure. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon an occupied structure. However, he is justified in the use of force likely to cause death or serious bodily harm only if:

(1) the entry is made or attempted in violent, riotous, or tumultuous manner and he reasonably believes that such force is necessary to prevent an assault upon or offer of personal violence to him or another then in the occupied structure; or

(2) he reasonably believes that such force is necessary to prevent the commission of a forcible felony in the occupied structure.

History: En. by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, .

Provided by Montana Legislative Services

45-3-104. Use of force in defense of other property. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than an occupied structure) or personal property lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.

History: En. by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, .

Provided by Montana Legislative Services

45-3-105. Use of force by aggressor. The justification described in 45-3-102 through 45-3-104 is not available to a person who:

(1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or

(2) purposely or knowingly provokes the use of force against himself, unless:

(a) such force is so great that he reasonably believes that he is in imminent danger of death or serious bodily harm and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or

(b) in good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

History: En. by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, .

Provided by Montana Legislative Services

45-3-106. Use of force to prevent escape. (1) A peace officer or other person who has an arrested person in his custody is justified in the use of such force to prevent the escape of the arrested person from custody as he would be justified in using if he were arresting such person.

(2) A guard or other peace officer is justified in the use of force, including force likely to cause death or serious bodily harm, which he reasonably believes to be necessary to prevent the escape from a correctional institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

History: En. by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, .

Provided by Montana Legislative Services

45-3-108. Use of force in resisting arrest. A person is not authorized to use force to resist an arrest which he knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

History: En. by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, .

Provided by Montana Legislative Services

45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) has been convicted in any state or federal court of a crime punishable by more than 1 year of incarceration or, regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted

by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

History: En. Sec. 1, Ch. 759, L. 1991; amd. Sec. 1, Ch. 408, L. 1995; amd. Sec. 3, Ch. 581, L. 1999.

Provided by Montana Legislative Services

45-8-323. Denial of renewal -- revocation of permit. A permit to carry a concealed weapon may be revoked or its renewal denied by the sheriff of the county in which the permittee resides if circumstances arise that would require the sheriff to refuse to grant the permittee an original license.

History: En. Sec. 3, Ch. 759, L. 1991.

Provided by Montana Legislative Services

45-8-328. Carrying concealed weapon in prohibited place -- penalty. (1) A person commits the offense of carrying a concealed weapon in a prohibited place if the person purposely or knowingly carries a concealed weapon in:

(a) portions of a building used for state or local government offices and related areas in the building that have been restricted;

(b) a bank, credit union, savings and loan institution, or similar institution during the institution's normal business hours. It is not an offense under this section to carry a concealed weapon while:

(i) using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or

(ii) at or near a branch office of an institution in a mall, grocery store, or other place unless the person is inside the enclosure used for the institution's financial services or is using the institution's financial services.

(c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.

(2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.

History: En. Sec. 8, Ch. 759, L. 1991; amd. Sec. 1, Ch. 572, L. 1999.

Provided by Montana Legislative Services

45-8-329. Concealed weapon permits from other states recognized -- advisory council. (1) A concealed weapon permit from another state is valid in this state if:

(a) the person issued the permit has the permit in the person's immediate possession;

(b) the person bearing the permit is also in possession of an official photo identification of the person, whether on the permit or on other identification; and

(c) the state that issued the permit requires a criminal records background check of permit applicants prior to issuance of a permit.

(2) The attorney general shall develop and maintain a list of states from which permits are recognized under this section for the use by law enforcement agencies in this state.

(3) A determination or declaration of a Montana government entity, official, or employee is not necessary to the existence and exercise of the privilege granted by this section.

(4) The governor shall establish a council, composed of interested persons, including law enforcement personnel and gun owners, to advise the governor on and pursue concealed weapon permit issues.

History: En. Sec. 3, Ch. 408, L. 1995; amd. Sec. 2, Ch. 476, L. 1999.

Provided by Montana Legislative Services

MONTANA COUNTY ATTORNEYS ASSOCIATION
34 West Sixth Avenue • Suite 2E
Helena, Montana 59601

HB 228 –the 'Rearming the Felons' bill
TALKING POINTS

1. HB 228 is amateurishly drafted, which leads to numerous technical problems.

   a. The shift in the burden of proof (Section 1 (5)) occurs in a "purpose" section not a substantive section. An explicitly contradictory statute exists in the current code (Section 45-3-115), yet is not even mentioned.

   b. The introduction of three new and undefined mental states (recklessly, deliberately and intentionally) in the brandishing section. The Montana criminal code uses and defines only three mental states: purposely, knowingly, or negligently.

   c. All the existing law of Justifiable Use of Force, § 45-3-101 *et seq.* remains on the books. Nothing has been repealed. Which statutes control? These very real technical problems exist because there was no substantive review by the Legislative Counsel to address these conflicting statutory construction issues. Since all the current law regarding justifiable use of force apparently remains in effect along with HB 228. Which law governs? No one knows, but we do know there are numerous conflicts with current laws and this law. The sponsor's stated purpose is to "clarify" the law. HB 228 accomplishes the opposite, and runs counter to our existing laws regarding justifiable use of force and the carrying concealed weapons statutes.

2. The citizens of Montana are receptive to "Castle Doctrine" legislation. HB 228 is not "Castle Doctrine" legislation. It is a major overhaul of well-settled self-defense law and concealed weapons statutes. HB 228 does not protect law-abiding citizens. It only creates loopholes for criminals and will have serious unintended consequences.

3. HB 228's real impact will be felt in law enforcement's response to domestic violence cases. Domestic violence is where we most often see violence in the home. In 2008, Yellowstone County alone had 67 felony domestic violence cases (prosecuting defendants with a minimum of 134 prior domestic violence convictions). It is already difficult enough for law enforcement to respond to domestic violence situations. The legislature has previously recognized the problems inherent in domestic violence, and has made it a priority to stop this societal epidemic. Accordingly, it has amended and expanded § 45-5-206 every session from 1991 through 2005. For example, in 2005, the legislature recognized by statute that these cases may involve mutual combat, and now requires an officer to make a determination and arrest the "predominant aggressor" (§ 46-6-311(1)(b)). HB 228 will set domestic violence enforcement back ages and undermine all the hard work of these 8 consecutive legislative sessions and arguably allows a partner or family member to choose deadly force as his lawful response to a mere verbal threat of bodily injury, or a slap in the face. Serial domestic abusers will use HB 228 to justify their crimes against their partners.

4. We are aware of no counterpart in any State in the country for the "brandishing a firearm" section of HB 228 (Section 3). It does not clarify Montana law; it muddles it. For example, under HB 228, if an individual in a crowded theater asked a rude patron to quit talking on his cell phone during the movie, and the rude person responded with a threat of bodily injury ("Shut up or I'll punch you in the nose!"), the first individual could then draw his concealed weapon, point it in the air, and say, "I have a gun and I will not be intimidated any more!" While the amateurish drafting of HB 228 forbids discharging a firearm in

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the direction of another person, it suggests by implication that a person could crank off a round into the ceiling for emphasis. Under HB 228, no crime is committed. He did not point the weapon at anyone; he only displayed it for defensive purposes because he felt "threatened" with bodily injury. HB 228 also condones without consequence the firing of the weapon in the air for defensive purposes. Montana's current law uses objective standards—how would a reasonable person respond—in such situations. HB 228 avoids the reasonable person standard and now adds to Montana's criminal code the subjective standard—the individual's claimed perceived fear—whether reasonable or not.

5. The amendments to the concealed weapons sections gut the permitting process. Since anyone acting under HB 228 can carry concealed without a permit or any screening procedure whatsoever, for all intents and purposes, the permitting process is gone. Perhaps this is why the sponsors are also repealing Section 45-8-317, the list of exceptions currently applied to the law. After all, with no need for permits or screening, there is no need for any exception. Thus, convicted violent/sexual offenders will no longer be screened or prohibited from carrying concealed weapons. The plain language of HB 228 Section 11(1)(2) allows such convicted felons to carry concealed weapons, so long as the convicted felon was not using the weapon to commit another crime. Under current law, when a law enforcement officer stops someone for a traffic violation and a pat-down for officer safety reveals a convicted felon is carrying a concealed weapon (it does not have to be a firearm), that is a felony.

Under HB 228, there will be no felony arrest sanctions available to law enforcement, because the officer cannot know whether the felon was carrying the concealed weapon to "commit a crime." The officer must wait until the felon has actually committed the crime with his hidden weapon and only then can he be charged with a misdemeanor. Unfortunately, there must first be another victim before this misdemeanor can be charged. Authorizing convicted felons to covertly arm themselves without consequence presents an extremely dangerous situation for law enforcement and the general public.

6. More troubling is the next scenario. Once violent criminals realize HB 228 not only encourages but gives them permission to brandish their weapons at each other without any criminal consequence, the public's safety will be shattered. Further, once weapons are "displayed," HB 228 then arguably allows the other party to defend themselves anywhere and anytime they are lawfully located (parks, malls, intersections) with deadly force. HB 228 neither recognizes nor gives law enforcement the ability to arrest mutually-agreed combatants, even if they mutually agreed to illegal activity. Other states provide no such safe harbor.

7. HB 228 pretends to "solve" a problem that does not exist. Proponents of HB 228 and its supporters have failed to identify or name any specific case or any specific incident where someone was harmed because HB 228 was not the law. The proponents fear that prosecutors and law enforcement are running amok depriving ordinary citizen of their Second Amendment rights. Some would have you believe that innocent Montanans who have lawfully used firearms to protect themselves are being arrested and prosecuted across this state. Yet, not a single case has been presented for consideration. But if such a case really did happen, somewhere, sometime in this century or last, we all should be talking about it. The fact that we are not speaks highly of our citizens and our law enforcement. HB 228 is a clumsy solution in search of a nonexistent problem.

8. Attached are the relevant sections of the Montana Codes Annotated (MCA) on the justifiable use of force and carrying concealed weapons.

SENATE JUDICIARY
EXHIBIT NO. 19
DATE 3/17/09
BILL NO HB228

March 10, 2009

Senate Judiciary Committee
Montana State Legislature
PO Box 200500
Capitol Building
Helena, MT 59620-0500

Dear Members of the Committee:

I am writing in opposition to HB 228 "Citizen self-defense and firearm rights" bill sponsored by Representative Krayton Kerns.

I am the parent of 3 college students, with all 3 currently attending college full time. The very thought of having other college students carrying around firearms on the campuses is a frightening thought. There is already a level of violence on the campuses, but the campuses work diligently to maintain safety for the students. Please do not create a situation where students are allowed to carry guns, thus endangering a large mass of people.

The weak argument has been made saying that the passage of this poor bill would actually make students safer by allowing them to fight back if there were a mass shooting on a campus or in the community. I strongly disagree with that warped rationale and plead with you as a parent to help keep our college students safe by opposing HB 228 and not allowing the bill to pass out of committee.

Sincerely,

Lynette Brown

Lynette Brown
7727 North Montana Ave
Helena, MT 59602

SENATE JUDICIARY
EXHIBIT NO 20
DATE 3/17/09
BILL NO HB 228

Schindler, Pam

From: Kathleen Stachowski [wildbison@bresnan.net]
Sent: Tuesday, March 17, 2009 9:16 AM
To: Schindler, Pam
Cc: Cliff Larsen
Subject: HB 228

Dear Ms. Schindler:

This message is for the Senate Judiciary committee (meeting right now!) regarding HB 228. Will you please pass it along to each member? Thanks!

I am opposed to HB 228, citizen self-defense and firearm rights, eliminating the need for a concealed weapon permits. In light of the just-released report on Montana's increase in domestic violence resulting in murder, most of which are gun deaths, it's time to stop promoting extremist measures that glorify and pander to this state's already-robust gun culture.

Thank you for considering my message.
Sincerely,

Kathleen Stachowski
PO Box 191, Lolo, MT 59847

SENATE JUDICIARY
EXHIBIT NO. 21
DATE 3/17/09
BILL NO HB228

Office of the Circuit Executive

Ninth Circuit Model Criminal Jury Instructions

6.7 SELF–DEFENSE

The defendant has offered evidence of having acted in self-defense. Use of force is justified when a person reasonably believes that it is necessary for the defense of oneself or another against the immediate use of unlawful force. However, a person must use no more force than appears reasonably necessary under the circumstances.

Force likely to cause death or great bodily harm is justified in self-defense only if a person reasonably believes that such force is necessary to prevent death or great bodily harm.

The government must prove beyond a reasonable dount that the defendant did not act in reasonable self-defense.

Comment

The first two paragraphs of this instruction are identical to the self-defense instructions contained in previous editions. *See, e.g.,* Manual of Model Criminal Jury Instructions for the Ninth Circuit, Instruction 6.5 (1997).The Ninth Circuit has found that the first two paragraphs of this instruction adequately inform the jury of defendant's defense where "[t]he court also instructed the jury that the prosecution bore the burden of proving beyond a reasonable doubt that the defendant had not acted in reasonable self-defense." *United States v. Keiser*, 57 F.3d 847, 850-52 (9th Cir. 1995), *cert. denied,* 516 U.S. 1029 (1995) (discussing Criminal Jury Instruction 6.05, 1992 edition).

Failure of the trial court to instruct the jury that the government has "to disprove beyond a reasonable doubt any claim of self-defense" is reversible error. *United States v. Sanchez-Lima*, 161 F.3d 545 (9th Cir. 1998).

A defendant is entitled to a self-defense instruction when "there is any foundation in the evidence, even though the evidence may be weak, insufficient, inconsistent or of doubtful credibility." *United States v. Sanchez-Lima,* 161 F.3d at 549.

See also Comment to Instruction 4.5 (Character of Victim) for a discussion of the admissibility of the victim's character where self-defense is claimed.

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BUSINESS REPORT

MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Tuesday, March 17, 2009 **Time:** 9:00 am
Place: Capitol **Room:** 303

BILLS and RESOLUTIONS HEARD:

HJ 14, HB 228

EXECUTIVE ACTION TAKEN:

COMMENTS:

SEN. Gary L. Perry, Chairman

MONTANA STATE SENATE
Roll Call
JUDICIARY COMMITTEE

DATE: 3/17/09

NAME	PRESENT	ABSENT/ EXCUSED
SENATOR GARY PERRY, CHAIRMAN	✓	
SENATOR JIM SHOCKLEY, VICE CHAIRMAN	✓	
SENATOR AUBYN CURTISS	✓	
SENATOR JOHN ESP	✓	
SENATOR GREG HINKLE	✓	
SENATOR LARRY JENT	✓	
SENATOR CAROL JUNEAU	✓	
SENATOR CLIFF LARSEN	✓	
SENATOR JESSE LASLOVICH	✓	
SENATOR DANIEL MCGEE	✓	
SENATOR LYNDA MOSS	✓	
SENATOR TERRY MURPHY	✓	

MONTANA STATE SENATE
Visitors Register

Judiciary Committee **Date** 3/17/09

Bill No. HB-228 **Sponsor(s)** Rep. K. Kerns

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Sheila Stearns	University System		✓	
MIKE Gray	MSPA / Billings PD		X	
Shantelle Graynor	MSLA office of Planning & Grants		X	
Kim Brown Campbell	DOVES of Polson		X	
DAVE WOOD	SELF	X		
Lucas Hamilton	ASUM		X	
Jamee Greer	Human Rights NW		✓	
Tom RAUNDAL	MN UA	X		
Jim Lenke	MT Manufacturers		✓	
Cathy Conner	MSLI		X	
Greg Truda	IBEW of MT	X		
Jon Hammar	Self	X		
ERICK PRATHER	SELF	X		
Dustin Leftridge	Self		X	
Jerry Williams	MT. Police Protective Assn.		X	
Ali Bovington	Atty Gen'l's Office		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

Judiciary Committee **Date** 3/17/09

Bill No. HB-228 **Sponsor(s)** Rep. K. Kerns

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
GARY MARBUT	MSSA GOA CCRKBA WMFC MRPA WCSN +	✓		
Larry Epstein	Glacier County MCAA		X	
Marty Lambert	MCAA		X	
Pat Driscoll	MCAA		X	
Randy Pinocci	Self	✓		
TOM MARTIN GRANDFATHERED	SELF	✓		
Frank Nelson	Self		✓	
Dennis Lopach	Self		✓	
Dan Carter	MSU Billings		X	
Harvey Hollandsworth	Self	✓		
Lincoln Dziekonski E. Helena	self	✓		
Leland Young	MCADSV		X	
MERLE RAPP	MT Co. Atty Assoc		X	
DOUG NULLE	SELF	✓		
MARK MUIR	City of Missoula, MACP		✓	
John MacDonald	City of Missoula		✓	
JIM CASHELL	MSPOA		✓	
BRIAN JUNY	NRA	✓		
Maureen Kirkland	Assoc Students MSU		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

Judiciary Committee **Date** 3/17/09

Bill No. HB-228 **Sponsor(s)** Rep. K. Kerns

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
DAVE LOEWEN	MLGWA		✓	
Roland Hurt, BigFork	Self	X		
Dennis G. Mills, Kila	SELF	✓		
Ben Davey	MPPA		✓	
Doug Wold	Self		✓	
Ryan Berry	Self		✓	
Cory Birdwell	Self		✓	
David Castle	Sheriff Cascade Co.		✓	
Rick Carter	Self	X		
Mitch Jessen	Self		✓	
LEO WADEKAMPER	SELF	✓		
Fred VanValkenburg	Missoula Co. Atty		✓	
Adrienne Kraemer	Self		✓	
DAVID SCHENCK	SHERIFF		✓	
Daryl R. Anderson	Sheriff		✓	
JEROME SCHAD	CAPTAIN JAIL		✓	
Barry Ross	Self		✓	
John Schaffer	GFPD/MPPA		✓	
TRUMAN TOLSON	MPPA / Missoula PD		✓	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chairman Gary L. Perry, on March 30, 2009 at 8:00 A.M., in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Gary L. Perry, Chairman (R)
Sen. Aubyn Curtiss (R)
Sen. John Esp (R)
Sen. Greg Hinkle (R)
Sen. Carol C. Juneau (D)
Sen. Cliff Larsen (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Terry Murphy (R)

Members Excused: Sen. Larry Jent (D)
Sen. Jim Shockley, Vice Chairman (R)

Members Absent: None

Staff Present: Valencia Lane, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HB 132, 3/23/2009
Executive Action:	HB 102-Remove from Table-failed, HB 534-Be Concurred In As Amended, HB 431-Remove from Table/Tabled, HB 132-Motion Withdrawn, HB 228-Be Concurred in As Amended

EXECUTIVE ACTION ON HB 228

02:37:14 **Motion**: Sen. McGee moved that **HB 228 BE CONCURRED IN.**

Discussion:

02:42:14 **Motion**: Sen. McGee moved that **HB 228 BE AMENDED.** **EXHIBIT(jus70a06)**

Discussion:

02:45:43 Sen. Jent
02:45:49 Sen. Laslovich
02:47:14 Sen. McGee
02:48:26 Sen. Shockley
02:49:18 Sen. McGee

02:49:54 **Vote**: Motion that **HB 228 BE AMENDED** carried unanimously by voice vote.

02:50:20 **Motion**: Sen. McGee moved that **HB 228 BE CONCURRED IN AS AMENDED.**

02:50:55 **Motion**: Sen. Perry moved that **HB 228 BE AMENDED.** **EXHIBIT(jus70a07)**

Discussion:

02:51:44 Sen. McGee
02:52:51 Ms. Lane
02:53:20 Sen. Esp
02:53:55 Sen. McGee
02:54:10 Sen. Jent
02:54:46 Sen. Hinkle
02:55:07 Sen. Jent

02:55:18 **Vote**: Motion that **HB 228 BE AMENDED** carried 11-1 by voice vote with Sen. Esp voting no.

02:55:38 **Motion**: Sen. McGee moved that **HB 228 BE CONCURRED IN AS AMENDED.**

02:56:22 **Motion**: Sen. McGee moved that **HB 228 BE AMENDED.** **EXHIBIT(jus70a08)**

02:57:10 **Vote**: Motion that **HB 228 BE AMENDED** carried 11-1 by voice vote with Sen. Juneau voting no.

02:57:25 **Motion**: Sen. McGee moved that **HB 228 BE CONCURRED IN AS AMENDED.**

Discussion:

02:57:40 Sen. Shockley
02:58:20 Sen. Jent

02:58:50 **Motion/Vote**: Sen. Laslovich moved that **HB 228 BE AMENDED.** Motion carried unanimously by voice vote.
EXHIBIT(jus70a09)

02:59:44 **Motion**: Sen. McGee moved that **HB 228 BE CONCURRED IN AS AMENDED.**

03:00:14 **Motion**: Sen. Shockley moved that **HB 228 BE AMENDED.**
EXHIBIT(jus70a10)

Discussion:

03:01:13 Sen. McGee

03:01:34 **Vote**: Motion that **HB 228 BE AMENDED** carried 11-1 by voice vote with Sen. Juneau voting no.

03:01:47 **Motion**: Sen. McGee moved that **HB 228 BE CONCURRED IN AS AMENDED.**

03:02:16 **Motion**: Sen. Jent moved that **HB 228 BE AMENDED.**
EXHIBIT(jus70a11)

Discussion:

03:03:18 Sen. Shockley
03:03:39 Sen. Jent
03:03:44 Sen. Esp
03:03:56 Sen. McGee

03:04:16 **Vote**: Motion that **HB 228 BE AMENDED** carried 11-1 by voice vote with Sen. Juneau voting no.

03:04:27 **Motion**: Sen. McGee moved that **HB 228 BE CONCURRED IN AS AMENDED.**

03:04:46 **Motion**: Sen. Shockley moved that **HB 228 BE AMENDED.**
EXHIBIT(jus70a12)

Discussion:

03:06:36 Sen. Perry
03:07:13 Sen. Shockley
03:11:59 Sen. McGee
03:13:43 Sen. Esp
03:14:34 Sen. Shockley
03:15:28 Sen. Hinkle
03:16:42 Sen. Laslovich
03:20:40 Sen. Shockley
03:21:51 Sen. Perry
03:22:10 Sen. Shockley
03:22:46 Sen. Perry
03:23:21 Sen. Shockley
03:24:50 Sen. Larsen
03:25:29 Sen. Shockley
03:25:59 Sen. Juneau
03:26:40 Sen. Shockley
03:27:48 Sen. Juneau
03:28:02 Sen. Shockley
03:28:11 Sen. Juneau
03:29:48 Sen. Shockley
03:30:23 Sen. Juneau
03:30:48 Sen. Shockley
03:31:08 Sen. Curtiss
03:31:46 Sen. Shockley
03:32:50 Sen. Esp
03:32:52 Sen. Perry
03:33:01 Sen. Jent
03:34:07 Sen. McGee
03:35:07 Sen. Shockley

03:35:49 **Vote**: Motion that **HB 228 BE AMENDED** failed 4-8 by roll call vote with Sen. Hinkle, Sen. McGee, Sen. Perry, and Sen. Shockley voting aye.

03:36:45 **Motion**: Sen. Jent moved that **HB 228 BE AMENDED.**
EXHIBIT(jus70a13)

Discussion:

03:43:20 Sen. Shockley
03:46:32 Sen. Esp
03:49:03 Sen. McGee
03:49:23 Sen. Jent
03:49:56 Sen. McGee
03:51:06 Sen. Larsen
03:51:48 Sen. Hinkle
03:53:15 Sen. Laslovich

03:57:50 Sen. Perry
03:58:22 Sen. Shockley
04:01:03 Sen. Curtiss
04:02:10 Sen. Murphy
04:04:14 Sen. Perry
04:04:24 Sen. McGee
04:05:09 Sen. Perry
04:05:47 Sen. McGee
04:07:19 Sen. Perry
04:08:08 Sen. McGee
04:08:39 Sen. Perry
04:10:11 Sen. McGee
04:10:57 Sen. Perry
04:11:46 Sen. McGee
04:12:12 Sen. Perry
04:12:23 Sen. Shockley
04:13:08 Sen. Moss

04:14:37 **Vote**: Motion that **HB 228 BE AMENDED** carried 7-5 by roll call vote with Sen. Curtiss, Sen. Hinkle, Sen. McGee, Sen. Murphy, and Sen. Shockley voting no.

04:15:33 **Motion**: Sen. McGee moved that **HB 228 BE CONCURRED IN AS AMENDED.**

04:15:41 **Motion**: Sen. Jent moved that **HB 228 BE AMENDED.**
EXHIBIT(jus70a14)

Discussion:

04:18:12 Sen. McGee
04:18:57 Ms. Lane
04:19:38 Sen. Jent
04:19:59 Sen. McGee
04:20:04 Ali Bovingdon, Assistant Attorney General, Department of Justice
04:20:40 Sen. McGee
04:20:45 Ms. Bovingdon
04:21:10 Sen. Perry
04:21:31 Sen. Shockley
04:21:45 Sen. Perry
04:21:54 Sen. Shockley
04:22:30 Sen. Perry
04:22:44 Sen. Shockley

(Sen. Esp absent from room)

04:22:59 Ms. Lane
04:23:58 Sen. Perry
04:24:14 Sen. McGee
04:24:25 Sen. Jent
04:24:40 Sen. Shockley
04:25:34 Ms. Lane

04:25:54 **Vote**: Motion that **HB 228 BE AMENDED** carried unanimously by voice vote. Sen. Esp voted by proxy.

04:26:08 **Motion/Vote**: Sen. McGee moved that **HB 228 BE CONCURRED IN AS AMENDED**. Motion carried 8-4 by roll call vote with Sen. Murphy, Sen. Moss, Sen. Juneau, and Sen. Hinkle voting no. Sen. Esp voted by proxy. Sen. McGee will carry HB 228 on the Senate floor.

ADJOURNMENT

Adjournment: 12:40 P.M.

Pam Schindler, Secretary

ps

Additional Documents:

EXHIBIT (jus70aad.pdf)

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 228** (third reading copy -- blue) **be concurred in as amended.**

Signed: *Senator Gary L. Perry, Chair*

To be carried by Senator Dan McGee

And, that such amendments read:

1. Title, line 8.
Following: "SECTIONS"
Strike: "45-8-315, 45-8-316,"
Insert: "45-3-103, 45-8-321, 45-8-328,"

2. Title, line 9.
Following: the first "MCA;"
Strike: "AND REPEALING SECTION 45-8-317, MCA"
Insert: "AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, line 10.
Following: line 9
Insert: "WHEREAS, the Legislature declares that:

(1) the right of Montanans to defend their lives and liberties, as provided in Article II, section 3, of the Montana Constitution, and their right to keep or bear arms in defense of their homes, persons, and property, as provided in Article II, section 12, of the Montana Constitution, are fundamental and may not be called into question;

(2) the use of firearms for self-defense is recognized within the right reserved to the individual people of Montana in Article II, section 12, of the Montana Constitution;

(3) self-defense is a natural right under section 1-2-104, MCA, and is included in sections 49-1-101 and 49-1-103, MCA;

Committee Vote:
Yes 8, No 4
Fiscal Note Required __

(4) the lawful use of firearms for self-defense is not a crime or an offense against the people of the state;

(5) in a criminal case in which self-defense is asserted, the burden of proof is as provided in [section 10];

(6) in self-defense, the use of justifiable force discourages violent crime and prevents victimization; and

(7) the purpose of [sections 1 through 3] is to clarify and secure the ability of the people to protect themselves."

4. Page 1, line 13 through line 25.
Strike: section 1 in its entirety
Renumber: subsequent sections

5. Page 1, line 29.
Following: "prior to"
Strike: "acting in self-defense."
Insert: "using force. The provisions of this section apply to a person offering evidence of justifiable use of force under 45-3-102, 45-3-103, or 45-3-104."

6. Page 2, line 1 through line 16.
Strike: section 3 in its entirety
Insert: "NEW SECTION. **Section 2. Openly carrying weapon -- display -- exemption.** (1) Any person who is not otherwise prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another person the fact that the person has a weapon.

(2) If a person reasonably believes that the person or another person is threatened with bodily harm, the person may warn or threaten the use of force, including deadly force, against the aggressor, including drawing or presenting a weapon.

(3) This section does not limit the authority of the board of regents or other postsecondary institutions to regulate the carrying of weapons, as defined in 45-8-361(5)(b), on their campuses."
Renumber: subsequent sections

7. Page 2, line 18.
Following: "**involving**"
Strike: "**self-defense**"
Following: "**claim**"
Insert: "**of justifiable use of force**"

8. Page 2, line 19.
Following: "appears to have"
Strike: "been"

9. Page 2, line 20.
Strike: "been in self-defense"
Insert: "involved justifiable use of force"

10. Page 2, lines 20 through 21.
Following: "testimony" on line 20
Strike: remainder of line 20 through "support" on line 21
Insert: "concerning"

11. Page 2, line 21.
Following: "and"
Insert: "that might support"
Following: "alleged"
Strike: "self-defense"
Insert: "justifiable use of force"

12. Page 2, line 22.
Insert: "**Section 4.** Section 45-3-103, MCA, is amended to read:

"**45-3-103. Use of force in defense of occupied structure.** (1) A person is justified in the use of force or threat to use force against another when and to the extent that ~~he~~ the person reasonably believes that ~~such conduct~~ the use of force is necessary to prevent or terminate ~~such~~ the other's unlawful entry into or attack upon an occupied structure. ~~However, he~~

(2) A person justified in the use of force pursuant to subsection (1) is justified in the use of force likely to cause death or serious bodily harm only if:

~~(1)~~(a) the entry is made or attempted ~~in violent, riotous, or tumultuous manner~~ and ~~he~~ the person reasonably believes that ~~such~~ the force is necessary to prevent an assault upon ~~or offer of personal violence to him~~ the person or another then in the occupied structure; or

~~(2)~~(b) ~~he~~ the person reasonably believes that ~~such~~ the force is necessary to prevent the commission of a forcible felony in the occupied structure.""

13. Page 4, line 23 through page 5, line 10.
Strike: sections 7 and 8 in their entirety
Renumber: subsequent sections

14. Page 5, line 12.
Following: line 11
Insert: "**Section 7.** Section 45-8-321, MCA, is amended to read:

"**45-8-321. Permit to carry concealed weapon.** (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the

applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) subject to the provisions of subsection (6), has been convicted in any state or federal court of:

(i) a crime punishable by more than 1 year of incarceration ~~or,~~; or

(ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, ~~violence, bodily or~~ serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms

association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

(6) A person, except a person referred to in subsection (1)(c)(ii), who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eligible.""

Insert: "Section 8. Section 45-8-328, MCA, is amended to read:

"45-8-328. Carrying concealed weapon in prohibited place -- penalty. (1) A person commits the offense of carrying a concealed weapon in a prohibited place if the person purposely or knowingly carries a concealed weapon in:

(a) portions of a building used for state or local government offices and related areas in the building that have been restricted;

(b) a bank, credit union, savings and loan institution, or similar institution during the institution's normal business hours. It is not an offense under this section to carry a concealed weapon while:

(i) using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or

(ii) at or near a branch office of an institution in a mall, grocery store, or other place unless the person is inside the enclosure used for the institution's financial services or is

using the institution's financial services.

(c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.;

(d) a health care facility as defined in 50-5-101.

(2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.""

Renumber: subsequent sections

15. Page 5, line 16 through line 17.
Following: "person." on line 16
Strike: remainder of line 16 through "45-3-106." on line 17

16. Page 5, line 20.
Following: line 19
Insert: "NEW SECTION. **Section 10. Justifiable use of force -- burden of proof.** In a criminal trial, when the defendant has offered evidence of justifiable use of force, the state has the burden of proving beyond a reasonable doubt that the defendant's actions were not justified."
Renumber: subsequent sections

17. Page 5, line 21.
Strike: section 10 in its entirety
Renumber: subsequent sections

18. Page 5, line 23.
Strike: "4"
Insert: "3"

19. Page 5, line 25.
Strike: "4"
Insert: "3"

20. Page 5, line 30.
Strike: "1"
Insert: "24"
Strike: "4"
Insert: "1"

21. Page 6, line 1.
Strike: "1"
Insert: "24"
Strike: "4"
Insert: "1"

22. Page 6, line 4.

Following: line 3
Insert: "(4) [Section 10] is intended to be codified as an integral part of Title 46, chapter 16, part 1, and the provisions of Title 46, chapter 16, part 1, apply to [section 10]."

23. Page 6, line 5.
Following: line 4
Insert: "NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval."

- END -

SENATE JUDICIARY
EXHIBIT NO. 6
DATE 3/20/09
BILL NO. HB228

These 228 17.avl amendments create the grey. FIVE Bill

Amendments to House Bill No. 228
3rd Reading Copy

Requested by Senator Dan McGee

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 27, 2009 (4:58pm)

1. Title, line 8.
Following: "SECTIONS"
Strike: "45-8-315,"
Insert: "45-3-103,"
Following: "45-8-316,"
Insert: "45-8-317, 45-8-321,"

2. Title, line 9.
Following: the first "MCA;"
Strike: "AND REPEALING SECTION 45-8-317, MCA"
Insert: "AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, line 10.
Following: line 9
Insert: "WHEREAS, the legislature declares that:

(1) the right of Montanans to defend their lives and liberties, as provided in Article II, section 3, of the Montana Constitution, and their right to keep or bear arms in defense of their homes, persons, and property, as provided in Article II, section 12, of the Montana Constitution, are fundamental and may not be called into question;

(2) the use of firearms for self-defense is recognized within the right reserved to the individual people of Montana in Article II, section 12, of the Montana Constitution;

(3) self-defense is a natural right under section 1-2-104, MCA, and is included in sections 49-1-101 and 49-1-103, MCA;

(4) the lawful use of firearms for self-defense is not a crime or an offense against the people of the state;

(5) in a criminal case in which self-defense is asserted, the burden of proof is as provided in [section 11];

(6) in self-defense, the use of justifiable force discourages violent crime and prevents victimization; and

(7) the purpose of [sections 1 through 3] is to clarify and secure the ability of the people to protect themselves."

4. Page 1, line 13 through line 25.
Strike: section 1 in its entirety
Renumber: subsequent sections

5. Page 1, line 29.

Following: "prior to"
Strike: "acting in self-defense."
Insert: "using force. The provisions of this section apply to a person offering evidence of justifiable use of force under 45-3-102, 45-3-103, or 45-3-104."

6. Page 2, line 1 through line 16.
Strike: section 3 in its entirety
Insert: "NEW SECTION. **Section 2. Openly carrying weapon -- display -- exemption.** (1) Any person who is not otherwise prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another person the fact that the person has a weapon.

(2) If a person reasonably believes that the person or another person is threatened with bodily harm, the person may warn or threaten the use of force, including deadly force, against the aggressor, including drawing or presenting a weapon in an appropriate circumstance.

(3) This section does not limit the authority of the board of regents to regulate the carrying of weapons, as defined in 45-8-361(5)(b), on campuses of the Montana university system."
Renumber: subsequent sections

7. Page 2, line 22.
Insert: "Section 4. Section 45-3-103, MCA, is amended to read:

"45-3-103. Use of force in defense of occupied structure. (1) A person is justified in the use of force or threat to use force against another when and to the extent that ~~he~~ the person reasonably believes that ~~such conduct~~ the use of force is necessary to prevent or terminate ~~such~~ the other's unlawful entry into or attack upon an occupied structure. ~~However, he~~

(2) A person justified in the use of force pursuant to subsection (1) is justified in the use of force likely to cause death or serious bodily harm only if:

~~(1)~~(a) the entry is made or attempted ~~in violent, riotous, or tumultuous manner~~ and ~~he~~ the person reasonably believes that ~~such~~ the force is necessary to prevent an assault upon ~~or offer of personal violence to him~~ the person or another then in the occupied structure; or

~~(2)~~(b) ~~he~~ the person reasonably believes that ~~such~~ the force is necessary to prevent the commission of a forcible felony in the occupied structure."
{*Internal References to 45-3-103:*
*ok 45-3-105** }"

8. Page 4, line 8.
Following: "allowed."
Insert: "(1)"

9. Page 4, line 12.

Following: line 11
Insert: "(2) The provisions of this section do not apply to housing provided by the Montana university system and other postsecondary institutions."

10. Page 4, line 23 through line 28.
Strike: section 7 in its entirety
Renumber: subsequent sections

11. Page 5, line 1.
Following: "~~Every~~"
Strike: "A"
Insert: "Except as provided in subsection (3), a"

12. Page 5, line 2.
Following: "person"
Strike: ", if using it to commit a criminal offense,"

13. Page 5, line 8 through line 9.
Following: "person" on line 8
Strike: remainder of line 8 through "offense," on line 9

14. Page 5, line 11.
Following: line 10
Insert: "(3) A person may carry a concealed weapon upon the person unless the person is prohibited by 45-8-321(1)(a) through (1)(h) from obtaining a concealed weapon permit.

(4) This section does not limit the authority of the board of regents to regulate the carrying of weapons, as defined in 45-8-361(5)(b), on campuses of the Montana university system."

15. Page 5, line 12.
Following: line 11
Insert: **"Section 8.** Section 45-8-317, MCA, is amended to read:

"45-8-317. Exceptions. (1) Section 45-8-316 does not apply to:

(a) any peace officer of the state of Montana or of another state who has the power to make arrests;

(b) any officer of the United States government authorized to carry a concealed weapon;

(c) a person in actual service as a member of the national guard;

(d) a person summoned to the aid of any of the persons named in subsections (1)(a) through (1)(c);

(e) a civil officer or the officer's deputy engaged in the discharge of official business;

(f) a probation and parole officer authorized to carry a firearm under 46-23-1002;

(g) a person issued a permit under 45-8-321 or a person with a permit recognized under 45-8-329;

(h) an agent of the department of justice or a criminal investigator in a county attorney's office;

(i) a person who is outside the official boundaries of a city or town or the confines of a logging, lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping, hiking, backpacking, farming, ranching, or other outdoor activity in which weapons are often carried for recreation or protection; ~~or~~

(j) the carrying of arms on one's own premises or at one's home or place of business; or

(k) the carrying of a concealed weapon pursuant to 45-8-316(3).

(2) With regard to a person issued a permit under 45-8-321, the provisions of 45-8-328 do not apply to this section."

{*Internal References to 45-8-317:*
*OK 45-8-315** }"

Insert: "Section 9. Section 45-8-321, MCA, is amended to read:

"45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) has been convicted in any state or federal court of a crime punishable by more than 1 year of incarceration or, regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other

conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be

satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

(6) A person who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eligible."

{*Internal References to 45-8-321: ALL OK*
*45-8-315** *45-8-315** *45-8-317* *45-8-317*
*45-8-322** *45-8-322* }"

Renumber: subsequent sections

16. Page 5, line 16 through line 17.
Following: "person." on line 16
Strike: remainder of line 16 through "45-3-106." on line 17

17. Page 5, line 20.
Following: line 19
Insert: "NEW SECTION. **Section 11. Justifiable use of force -- burden of proof.** In a criminal trial, when the defendant has offered evidence of justifiable use of force, the state has the burden of proving beyond a reasonable doubt that the defendant's actions were not justified."
Renumber: subsequent sections

18. Page 5, line 21.
Strike: section 10 in its entirety
Renumber: subsequent sections

19. Page 5, line 23.
Strike: "4"
Insert: "3"

20. Page 5, line 25.
Strike: "4"
Insert: "3"

21. Page 5, line 30.
Strike: "1"
Insert: "24"
Strike: "4"
Insert: "1"

22. Page 6, line 1.
Strike: "1"
Insert: "24"
Strike: "4"
Insert: "1"

23. Page 6, line 4.
Following: line 3
Insert: "(4) [Section 11] is intended to be codified as an integral part of Title 46, chapter 16, part 1, and the provisions of Title 46, chapter 16, part 1, apply to [section 11]."

24. Page 6, line 5.
Following: line 4
Insert: "NEW SECTION. **Section 13. {standard} Effective date.** [This act] is effective on passage and approval."

- END -

SENATE JUDICIARY
EXHIBIT NO. 7
DATE 3/30/09
BILL NO. HB228

HB 228 – Amendment

As defined in M.C.A 45-8-328 (carrying a concealed weapon in a prohibited place)

To add to 45 – 8 – 328 a new subsection (d):

"(d) health care facility as defined in M.C.A 50-5-101."

This will specify you may not carry a concealed weapon into a "health care facility" which includes a list of health service buildings including hospitals and mental health centers and nursing care facilities.

SENATE JUDICIARY
EXHIBIT NO. 8
DATE 3/30/09
McGee. HB228
BILL NO.

technical change

change References from "self-defense" to "justifiable use of force" to MATCH Existing code.

Amendments to House Bill No. 228
GREY.FIVE Copy

Requested by Senator Dan McGee

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 28, 2009 (3:12pm)

1. Page 3, line 1.
Following: "involving"
Strike: "self-defense"
Following: "claim"
Insert: "of justifiable use of force"

2. Page 3, line 2.
Following: "appears to have"
Strike: "been"

3. Page 3, line 3.
Strike: "been in self-defense"
Insert: "involved justifiable use of force"

4. Page 3, line 4.
Strike: "that might support"
Insert: "concerning"
Following: "and"
Insert: "that might support"
Following: "alleged"
Strike: "self-defense"
Insert: "justifiable use of force"

THIS IS THE WAY NEW SECTION 3. WOULD LOOK WITH THIS AMENDMENT:

NEW SECTION. Section 3. **Investigation of alleged offense involving ~~self-defense~~ claim of justifiable use of force.** When an investigation is conducted by a peace officer of an incident that appears to have ~~been~~ or is alleged to have ~~been in self-defense~~ involved justifiable use of force, the investigation must be conducted so as to disclose all evidence, including testimony, ~~that might support~~ concerning the alleged offense and that might support the apparent or alleged ~~self-defense~~ justifiable use of force."

- END -

SENATE JUDICIARY
EXHIBIT NO. 9
DATE 3/30/09
BILL NO. HB228

Technical Amendment:

Removes exemption for U. System b/c exemption is no longer needed b/c this new section will now be codified in T72, ch24, part1, MCA where U. System already has an exemption

this would be duplicative & confusing if Not Removed.

Amendments to House Bill No. 228
GREY.FIVE Copy

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 28, 2009 (2:27pm)

1. Page 5, line 6.
Following: **"allowed."**
Strike: "(1)"

2. Page 5, line 10 through line 11.
Strike: subsection (2) in its entirety

- END -

SENATE JUDICIARY
EXHIBIT NO. 10
DATE 3/30/09
BILL NO. HB228

Shockley's

Revise language of university SYSTEM EXEMPTION to APPLY to other Postsecondary Institutions

Amendments to House Bill No. 228
GREY.FIVE Copy

Requested by Senator Jim Shockley

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 28, 2009 (3:34pm)

1. Page 2, line 28.
Following: "regents"
Insert: "or other postsecondary institutions"

2. Page 2, line 29.
Following: "on"
Insert: "their"
Following: "campuses"
Strike: "of the Montana university system"

New section #2. "OPENLY CARRY"

THIS IS HOW NEW SECTION 2. WOULD LOOK WITH ABOVE AMENDMENT:

NEW SECTION. **Section 2. Openly carrying weapon -- display -- exemption.** (1) Any person who is not otherwise prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another person the fact that the person has a weapon. ~~It is not necessary that the person believes that the person is threatened for the communication to be lawful~~.

(2) If a person reasonably believes that the person or another person is threatened with bodily harm, the person may WARN OR threaten the use of ~~deadly~~ force, INCLUDING DEADLY FORCE, against the aggressor, including DRAWING OR presenting a weapon in an appropriate circumstance.

(3) This section does not limit the authority of the board of regents OR OTHER POSTSECONDARY INSTITUTIONS to regulate the carrying of weapons, as defined in 45-8-361 (5)(b) on THEIR campuses ~~of the Montana university system~~."

---

3. Page 6, line 13.
Following: "regents"
Insert: "or other postsecondary institutions"

4. Page 6, line 14.
Following: "on"
Insert: "their"
Following: "campuses"
Strike: "of the Montana university system"

- END -

45-8-316 "CONCEALED CARRY"
[subsection (3) would be same as above]

SENATE JUDICIARY
EXHIBIT NO. 11
DATE 3/30/09
BILL NO. HB228

Amendments to House Bill No. 228
GREY.FIVE Copy

Requested by Senator Larry Jent

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 28, 2009 (3:46pm)

1. Page 2, line 27.
Following: "weapon"
Strike: "in an appropriate circumstance"

THIS IS HOW NEW SECTION 2. WOULD LOOK WITH THIS AMENDMENT:

Insert: " NEW SECTION. **Section 2. Openly carrying weapon -- display -- exemption.** (1) Any person who is not otherwise prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another person the fact that the person has a weapon. ~~It is not necessary that the person believes that the person is threatened for the communication to be lawful~~.

(2) If a person reasonably believes that the person or another person is threatened with bodily harm, the person may WARN OR threaten the use of ~~deadly~~ force, INCLUDING DEADLY FORCE, against the aggressor, including DRAWING OR presenting a weapon in ~~**an appropriate circumstance**~~.

(3) This section does not limit the authority of the board of regents to regulate the carrying of weapons, as defined in 45-8-361 (5)(b) on campuses of the Montana university system."

- END -

SENATE JUDICIARY
EXHIBIT NO. 12
DATE 3/30/09
BILL NO. HB228

Amendments to House Bill No. 228
GREY.FIVE Copy

Requested by Senator Jim Shockley

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 28, 2009 (2:16pm)

Shockley's LC 6666 Amendment amends current statute ON "use of force in defense of occupied structure" to expand to "Dwelling"

1. Page 3, line 7.
Following: "**structure**"
Insert: "or dwelling"
Following: "."
Strike: "A"
Insert: "(1) (a) Except as provided in subsection (2), a"

2. Page 3, line 11.
Strike: "(2)"
Insert: "(b)"
Following: "(1)"
Insert: "(a)"

3. Page 3, line 13.
Strike: "(A)"
Insert: "(i)"

4. Page 3, line 16.
Strike: "(B)"
Insert: "(ii)"

5. Page 3, line 18.
Following: line 17
Insert: " (2) Any occupant of a dwelling is justified in using any degree of physical force, including deadly force, against another person if:

(a) that other person has made an unlawful entry into the dwelling;

(b) the occupant has a reasonable belief that the other person:

(i) has committed a crime in the dwelling in addition to the unlawful entry; or

(ii) is committing or intends to commit a crime against a person or property in addition to the unlawful entry; and

(c) the occupant reasonably believes that the other person might use any physical force, no matter how slight, against any occupant of the dwelling."

COLORADO language

- END -

SENATE JUDICIARY
EXHIBIT NO. 13
DATE 3/30/09
BILL NO. HB 228
Ali B. #1

Amendments to House Bill No. 228
GREY.FIVE Copy

Requested by Senator Larry Jent
(Prepared by Ali Bovingdon -- # 1)

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 28, 2009 (10:37am)

1. Title, line 9.
Strike: "45-8-316, 45-8-317,"

2. Page 5, line 30 through page 7, line 5.
Strike: section 7 through section 8 in their entirety
Renumber: subsequent sections

- END -

Strikes amendments to 45-8-316 45-8-317

Effect: takes out of HB 228 the elimination of concealed weapon permit requirement

i.e. leaves current law "as is"

= permit required to carry concealed weapon

SENATE JUDICIARY
EXHIBIT NO. 14
DATE 3/30/09
BILL NO. HB228

Amendments to House Bill No. 228
GREY.FIVE Copy

Requested by Senator Larry Jent
(Prepared by Ali Bovingdon -- # 2)

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 28, 2009 (10:52am)

1. Page 7, line 17.
Following: "(c)"
Insert: "subject to the provisions of subsection (6),"
Following: "court of"
Insert: ": (i)"

2. Page 7, line 18.
Following: "incarceration"
Strike: "or ,"
Insert: "; or (ii)"

3. Page 7, line 19.
Following: "homicide,"
Strike: "violence, bodily or"

4. Page 8, line 30.
Following: "PERSON"
Insert: ", except a person referred to in subsection (1)(c)(ii),"

- END -

JENTS Ali B. #2 amends current concealed weapons statute - to put in language about Restoration of Rights after felony conviction (Except for Really Bad Guys)

(SEE ATTACHED)

SECTION 9. SECTION 45-8-321, MCA, IS AMENDED TO READ:

"45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) **SUBJECT TO THE PROVISIONS OF SUBSECTION (6),** has been convicted in any state or federal court of:

(I) a crime punishable by more than 1 year of incarceration~~or;~~ **; OR**

(II) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, ~~**violence, bodily or**~~ serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill,

mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the

applicant's familiarity with a firearm.

(6) A PERSON, EXCEPT A PERSON REFERRED TO IN SUBSECTION (1)(C)(II), WHO HAS BEEN CONVICTED OF A FELONY AND WHOSE RIGHTS HAVE BEEN RESTORED PURSUANT TO ARTICLE II, SECTION 28, OF THE MONTANA CONSTITUTION IS ENTITLED TO ISSUANCE OF A CONCEALED WEAPONS PERMIT IF OTHERWISE ELIGIBLE."

BUSINESS REPORT

MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Monday, March 30, 2009 **Time:** 9:00 am
Place: Capitol **Room:** 303

BILLS and RESOLUTIONS HEARD:

HB 132

EXECUTIVE ACTION TAKEN: HB 102-Remove from the Table-motion failed, HB 534-Be Concurred in As Amended, HB 431-Removed from the Table, Tabled, HB 132-Withdrew Motion, Be Concurred In, HB 228-Be Concurred in As Amended

COMMENTS:

SEN. Gary L. Perry, Chairman

MONTANA STATE SENATE
Roll Call
JUDICIARY COMMITTEE

DATE: 3/30/09

NAME	PRESENT	ABSENT/ EXCUSED
SENATOR GARY PERRY, CHAIRMAN	✓	
SENATOR JIM SHOCKLEY, VICE CHAIRMAN	✓	✓
SENATOR AUBYN CURTISS	✓	
SENATOR JOHN ESP	✓	
SENATOR GREG HINKLE	✓	
SENATOR LARRY JENT	✓	✓
SENATOR CAROL JUNEAU	✓	
SENATOR CLIFF LARSEN	✓	
SENATOR JESSE LASLOVICH	✓	
SENATOR DANIEL MCGEE	✓	
SENATOR LYNDA MOSS	✓	
SENATOR TERRY MURPHY	✓	

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 3/30/09 BILL NO HB228 MOTION NO. 10
MOTION:

Amendment 228.22

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR DANIEL MCGEE	✓		
SENATOR JESSE LASLOVICH		✓	
SENATOR AUBYN CURTISS		✓	
SENATOR LARRY JENT		✓	
SENATOR TERRY MURPHY		✓	
SENATOR LYNDA MOSS		✓	
SENATOR JOHN ESP		✓	
SENATOR CLIFF LARSEN		✓	
SENATOR CAROL JUNEAU		✓	
SENATOR GREG HINKLE	✓		
SENATOR JIM SHOCKLEY, VICE CHAIR	✓		
SENATOR GARY PERRY, CHAIRMAN	✓		

4/8

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 3/30/09 BILL NO HB228 MOTION NO. 14
MOTION:

amendment 228.03

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR DANIEL MCGEE		—	
SENATOR JESSE LASLOVICH	—		
SENATOR AUBYN CURTISS		—	
SENATOR LARRY JENT	—		
SENATOR TERRY MURPHY		—	
SENATOR LYNDA MOSS	—		
SENATOR JOHN ESP	—		
SENATOR CLIFF LARSEN	—		
SENATOR CAROL JUNEAU	—		
SENATOR GREG HINKLE		—	
SENATOR JIM SHOCKLEY, VICE CHAIR		—	
SENATOR GARY PERRY, CHAIRMAN	—		

7/5

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 3/ BILL NO HB 28 MOTION NO.
MOTION: Be concurred in as amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR DANIEL MCGEE	—		
SENATOR JESSE LASLOVICH	—		
SENATOR AUBYN CURTISS	—		
SENATOR LARRY JENT	—		
SENATOR TERRY MURPHY		—	
SENATOR LYNDA MOSS		—	
SENATOR JOHN ESP	—		—
SENATOR CLIFF LARSEN	—		
SENATOR CAROL JUNEAU		—	
SENATOR GREG HINKLE		—	
SENATOR JIM SHOCKLEY, VICE CHAIR	—		
SENATOR GARY PERRY, CHAIRMAN	—		

8/4

AUTHORIZED
SENATE COMMITTEE PROXY

I request to be excused from Judiciary committee because of other commitments. I desire to leave my proxy vote with:

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
3/6/09 HB 298 be concur	✓	
3/25/09 HB 591 amend	✓	
HB591 concur as amend	✓	
HB301 amend		✓
HB301 conc. amen.		✓
HB.301 TABLE		✓
HB301 concur	✓	
HB295 reconsi.		✓
3/27/09 HB536 concur as amend	✓	
HB628 amend	✓	
[redacted]		

BILL/AMENDMENT	AYE	NO
3/30/09 HB228 228.24	X	
HB228 Be on IWS		
AMENDED	X	

Sen. [signature] (Signature) Date 1-5-09

AUTHORIZED
SENATE COMMITTEE PROXY

I request to be excused from Senate Judiciary committee because of other commitments. I desire to leave my proxy vote with:

Sen Taslovich

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

	BILL/AMENDMENT	AYE	NO
3/26/09	HB 477 concur	✓	
	HB 604 concur	✓	
	HB 216 concur	✓	
	HB 95 amend	✓	
	HB 95 concur as amended	✓	
3/30/09	HB 102 rem. from the TABLE	✓	
	HB 534 Shockley amend. #1		
	053408.ajg	✓	
	HB 534 amend., esp #2	✓	
	[redacted]		
	HB 534 Shockley (Shockley #3)	✓	
	[redacted] amend		

	BILL/AMENDMENT	AYE	NO
3/30/09	HB 534 Taslovich #4	✓	
	reinsert #6		
	HB 534 concur	✓	
	as amended		
	[redacted]		
	[redacted]		
	[redacted]		

Sen. _____ Date _____
(Signature)

(Sen. Jent)

S:\Data\WordProcessing\Forms\AuthorizedSenateCommitteeProxy.wpd

AUTHORIZED
SENATE COMMITTEE PROXY

I request to be excused from Judiciary committee because of other commitments. I desire to leave my proxy vote with:

SENATOR PERRY

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

	BILL/AMENDMENT	AYE	NO
3/6/08	HB 308 amend	✓	
	[redacted]		
	[redacted]		
	[redacted]		
3/30/09	HB102 rem. from TABLE		✓

BILL/AMENDMENT	AYE	NO

Sen. _____ Date 7 1-5-09
(Signature)

HOUSE BILL NO. 228

INTRODUCED BY K. KERNS, ANKNEY, ARNTZEN, BALYEAT, BENNETT, BLACK, BLASDEL, BONIEK, R. BROWN, T. BROWN, CAMPBELL, CURTISS, GALLUS, HAMLETT, HENDRICK, HINKLE, HOVEN, INGRAHAM, JACKSON, JONES, KOTTEL, MCGEE, MEHLHOFF, MILLER, MORE, RANDALL, ROUNDSTONE, SMITH, SONJU, VANCE, WARBURTON

A BILL FOR AN ACT ENTITLED: "AN ACT PRESERVING AND CLARIFYING LAWS RELATING TO THE RIGHT OF SELF-DEFENSE AND THE RIGHT TO BEAR ARMS; AMENDING SECTIONS ~~45-8-315, 45-8-316,~~ 45-3-103, 45-8-321, 45-8-328, AND 46-6-502, MCA; ~~AND REPEALING SECTION 45-8-317, MCA~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, THE LEGISLATURE DECLARES THAT:

(1) THE RIGHT OF MONTANANS TO DEFEND THEIR LIVES AND LIBERTIES, AS PROVIDED IN ARTICLE II, SECTION 3, OF THE MONTANA CONSTITUTION, AND THEIR RIGHT TO KEEP OR BEAR ARMS IN DEFENSE OF THEIR HOMES, PERSONS, AND PROPERTY, AS PROVIDED IN ARTICLE II, SECTION 12, OF THE MONTANA CONSTITUTION, ARE FUNDAMENTAL AND MAY NOT BE CALLED INTO QUESTION;

(2) THE USE OF FIREARMS FOR SELF-DEFENSE IS RECOGNIZED WITHIN THE RIGHT RESERVED TO THE INDIVIDUAL PEOPLE OF MONTANA IN ARTICLE II, SECTION 12, OF THE MONTANA CONSTITUTION;

(3) SELF-DEFENSE IS A NATURAL RIGHT UNDER SECTION 1-2-104, MCA, AND IS INCLUDED IN SECTIONS 49-1-101

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED IN FULL. PLEASE REFER TO 2ND RD--2ND HOUSE (TAN) FOR COMPLETE TEXT.

APPROVED BY COMM ON JUDICIARY

HOUSE BILL NO. 228

INTRODUCED BY K. KERNS, ANKNEY, ARNTZEN, BALYEAT, BENNETT, BLACK, BLASDEL, BONIEK, R. BROWN, T. BROWN, CAMPBELL, CURTISS, GALLUS, HAMLETT, HENDRICK, HINKLE, HOVEN, INGRAHAM, JACKSON, JONES, KOTTEL, MCGEE, MEHLHOFF, MILLER, MORE, RANDALL, ROUNDSTONE, SMITH, SONJU, VANCE, WARBURTON

A BILL FOR AN ACT ENTITLED: "AN ACT PRESERVING AND CLARIFYING LAWS RELATING TO THE RIGHT OF SELF-DEFENSE AND THE RIGHT TO BEAR ARMS; AMENDING SECTIONS ~~45-8-315, 45-8-316,~~ 45-3-103, 45-8-321, 45-8-328, AND 46-6-502, MCA; ~~AND REPEALING SECTION 45-8-317, MCA~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, THE LEGISLATURE DECLARES THAT:

(1) THE RIGHT OF MONTANANS TO DEFEND THEIR LIVES AND LIBERTIES, AS PROVIDED IN ARTICLE II, SECTION 3, OF THE MONTANA CONSTITUTION, AND THEIR RIGHT TO KEEP OR BEAR ARMS IN DEFENSE OF THEIR HOMES, PERSONS, AND PROPERTY, AS PROVIDED IN ARTICLE II, SECTION 12, OF THE MONTANA CONSTITUTION, ARE FUNDAMENTAL AND MAY NOT BE CALLED INTO QUESTION;

(2) THE USE OF FIREARMS FOR SELF-DEFENSE IS RECOGNIZED WITHIN THE RIGHT RESERVED TO THE INDIVIDUAL PEOPLE OF MONTANA IN ARTICLE II, SECTION 12, OF THE MONTANA CONSTITUTION;

(3) SELF-DEFENSE IS A NATURAL RIGHT UNDER SECTION 1-2-104, MCA, AND IS INCLUDED IN SECTIONS 49-1-101 AND 49-1-103, MCA;

(4) THE LAWFUL USE OF FIREARMS FOR SELF-DEFENSE IS NOT A CRIME OR AN OFFENSE AGAINST THE PEOPLE OF THE STATE;

(5) IN A CRIMINAL CASE IN WHICH SELF-DEFENSE IS ASSERTED, THE BURDEN OF PROOF IS AS PROVIDED IN [SECTION 10];

(6) IN SELF-DEFENSE, THE USE OF JUSTIFIABLE FORCE DISCOURAGES VIOLENT CRIME AND PREVENTS VICTIMIZATION; AND

(7) THE PURPOSE OF [SECTIONS 1 THROUGH 3] IS TO CLARIFY AND SECURE THE ABILITY OF THE PEOPLE TO PROTECT THEMSELVES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. **Section 1. Purpose.** The legislature declares that:~~

~~(1) the right of Montanans to defend their lives and liberties, as provided in Article II, section 3, of the Montana constitution, and their right to keep or bear arms in defense of their homes, persons, and property, as provided in Article II, section 12, of the Montana constitution, is fundamental and may not be called into question;~~

~~(2) the use of firearms for self-defense is recognized within the right reserved to the individual people of Montana in Article II, section 12, of the Montana constitution;~~

~~(3) self-defense is a natural right under 1-2-104 and is included in 49-1-101 and 49-1-103;~~

~~(4) the lawful use of firearms for self-defense is not a crime or an offense against the people of the state;~~

~~(5) if self-defense is asserted by a defendant in a criminal action, the state has the burden to prove the absence of justification beyond a reasonable doubt;~~

~~(6) the use of firearms for self-defense discourages violent crime and prevents victimization; and~~

~~(7) the purpose of [sections 1 through 5 4] is to clarify and secure the ability of the people to protect themselves from wrongful assault.~~

NEW SECTION. **Section 1. No duty to summon help or flee.** Except as provided in 45-3-105, a person who is lawfully in a place or location and who is threatened with bodily injury or loss of life has no duty to retreat from a threat or summon law enforcement assistance prior to ~~acting in self-defense.~~ USING FORCE. THE PROVISIONS OF THIS SECTION APPLY TO A PERSON OFFERING EVIDENCE OF JUSTIFIABLE USE OF FORCE UNDER 45-3-102, 45-3-103, OR 45-3-104.

~~NEW SECTION. **Section 3. Defensive display of firearm not offense.** (1) A person who displays or shows a firearm TO A PERSON OTHER THAN AN IDENTIFIED PEACE OFFICER for a harmless defensive purpose needs no justification for the display and may not be charged with or convicted of an offense for that display.~~

~~(2) Displaying or showing a firearm includes but is not limited to:~~

~~(a) openly wearing, carrying, or possessing a firearm;~~

~~(b) verbally informing another that one possesses a firearm; and~~

~~(c) holding a firearm in a position so that the firearm does not point directly at another person.~~

~~(3) The right to show or display a firearm does not include the following situations, and justification is required for the display:~~

~~(a) intentionally or recklessly pointing a firearm directly at another person or sweeping another person with the muzzle of a firearm;~~

~~(b) intentionally discharging a firearm in the direction of another person; or~~

~~(c) deliberately provoking another person into threatening words or actions when possessing a firearm;~~

~~(D) NEGLIGENTLY OR PURPOSEFULLY THREATENING A PEACE OFFICER WITH A FIREARM;~~

~~(E) DISPLAYING A FIREARM DURING THE COMMISSION OF A FORCIBLE FELONY; OR~~

~~(F) DISPLAYING A FIREARM AS PART OF A PATTERN OF CRIMINAL STREET GANG ACTIVITY AS DEFINED IN 45-8-405.~~

NEW SECTION. **SECTION 2. OPENLY CARRYING WEAPON -- DISPLAY -- EXEMPTION.** (1) ANY PERSON WHO IS NOT OTHERWISE PROHIBITED FROM DOING SO BY FEDERAL OR STATE LAW MAY OPENLY CARRY A WEAPON AND MAY COMMUNICATE TO ANOTHER PERSON THE FACT THAT THE PERSON HAS A WEAPON.

(2) IF A PERSON REASONABLY BELIEVES THAT THE PERSON OR ANOTHER PERSON IS THREATENED WITH BODILY HARM, THE PERSON MAY WARN OR THREATEN THE USE OF FORCE, INCLUDING DEADLY FORCE, AGAINST THE AGGRESSOR, INCLUDING DRAWING OR PRESENTING A WEAPON.

(3) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF THE BOARD OF REGENTS OR OTHER POSTSECONDARY INSTITUTIONS TO REGULATE THE CARRYING OF WEAPONS, AS DEFINED IN 45-8-361(5)(B), ON THEIR CAMPUSES.

NEW SECTION. **Section 3. Investigation of alleged offense involving ~~self-defense~~ claim OF JUSTIFIABLE USE OF FORCE.** When an investigation is conducted by a peace officer of an incident that appears to have ~~been~~ or is alleged to have ~~been in self-defense~~ INVOLVED JUSTIFIABLE USE OF FORCE, the investigation must be conducted so as to disclose all evidence, including testimony~~, that might support~~ CONCERNING the alleged offense and THAT MIGHT SUPPORT the apparent or alleged ~~self-defense~~ JUSTIFIABLE USE OF FORCE.

SECTION 4. SECTION 45-3-103, MCA, IS AMENDED TO READ:

"45-3-103. Use of force in defense of occupied structure. (1) A person is justified in the use of force or threat to use force against another when and to the extent that ~~he~~ the person reasonably believes that ~~such conduct~~ the use of force is necessary to prevent or terminate ~~such~~ the other's unlawful entry into or attack upon an occupied structure. ~~However, he~~

(2) A person justified in the use of force pursuant to subsection (1) is justified in the use of force likely to cause death or serious bodily harm only if:

~~(1)~~(a) the entry is made or attempted ~~in violent, riotous, or tumultuous manner~~ and ~~he~~ the person reasonably believes that ~~such~~ the force is necessary to prevent an assault upon ~~or offer of personal violence to him~~ the person or another then in the occupied structure; or

~~(2)~~(b) ~~he~~ the person reasonably believes that ~~such~~ the force is necessary to prevent the commission of a forcible felony in the occupied structure."

~~NEW SECTION. **Section 5. Award of attorney fees and costs -- charge dismissed -- person found not guilty.** In a criminal prosecution of a person who is accused of an offense and who asserts the right of self-defense under Article II, section 12, of the Montana constitution, if the charge is dismissed or the person is found not guilty, the court shall award the person reasonable attorney fees and costs specific to the defense of the charge.~~

~~NEW SECTION. **Section 6. Conditions for seizure of firearm -- return of seized firearm.** (1) Unless a firearm is seized pursuant to 46-5-401, a peace officer may seize a legally possessed firearm only:~~

~~(a) at an incident in which a firearm is present and a peace officer on the scene has probable cause to believe that the firearm was used to commit a crime. However, the peace officer may take only that firearm and no other into temporary custody, for up to 2 hours, to secure the safety of persons at the scene. If an arrest is not made, the firearm must be returned to the person from whom it was seized or to the rightful owner if that is determined to be another person no later than the end of the 2-hour custody period, unless a court order is obtained to retain the firearm.~~

~~(b) if a person is arrested because of probable cause to believe that the person has committed a crime and it is alleged with probable cause that the firearm has been used to further that crime. The firearm must be returned to the person from whom it was seized or to the rightful owner, if that is determined to be a different person, unless a court order is obtained to retain the firearm, within 2 weeks of the seizure if a criminal charge has not been filed against the person from whom the firearm was seized.~~

~~(2) If a criminal charge against a person from whom a firearm has been seized is dismissed or the person is found not guilty, the firearm must be returned to the person or to the rightful owner if that is determined to be a different person within 48 hours of the dismissal or of a verdict of not guilty if no other charges directly relating to the firearm are pending.~~

~~(3) A person from whom a firearm is seized or kept in a manner that is not consistent with this section~~

~~may compel the return of the firearm by demanding the return in writing, without regard to the form of the writing, delivered to a representative of the law enforcement agency that initially seized the firearm. The demand must be honored within 24 hours. This process does not require an order of any court to be effective. If the firearm is not returned, the person may seek an immediate writ of mandamus from the district court judge or justice of the peace to compel the return. The person may also seek judicial sanctions and reasonable attorney fees if the person prevails against a law enforcement agency that has failed to comply with the initial demand for return. A person who may not legally possess any firearm or the type of firearm seized is not authorized to demand the return of a firearm under this subsection.~~

~~(4) A peace officer or law enforcement agency in possession of a firearm under this section shall exercise due care to prevent loss of or damage to the firearm and may be held liable for any loss or damage.~~

~~(5) If a peace officer or law enforcement agency seizes a firearm under this section, the person from whom the firearm was seized must be given a receipt for the firearm by the officer who seized the firearm or by another officer from the seizing officer's agency. The receipt must contain enough specificity to identify the firearm and must be given by either of those officers before the seizing officer leaves the scene of the seizure.~~

NEW SECTION. **Section 5. Firearm not to be destroyed.** If a firearm possessed by a law enforcement agency was not purchased by the agency for agency use, if it is legal for a private person to own and possess the firearm, and if the legal owner cannot be determined by the agency, the agency may not destroy the firearm and shall sell the firearm to a licensed dealer. The proceeds of the sale must be deposited in the general fund of the governmental entity of which the agency is a part.

NEW SECTION. **Section 6. Landlords and tenants -- no firearm prohibition allowed.** A landlord or operator of a hotel or motel may not, by contract or otherwise, prevent a tenant or a guest of a tenant from possessing on the premises a firearm that it is legal for the tenant or guest to possess. A landlord or operator of a hotel or motel may prohibit the discharge of a firearm on the premises except in self-defense.

~~NEW SECTION. **Section 9. Employer prohibition of means of self-defense.** (1) An employer who as a condition of employment prohibits an employee from possessing the means of defending the employee in the workplace, including the possession of firearms, shall provide a level of security and safety for the employee equal to that which the employee could have provided without the prohibition. An employer who violates this~~

~~requirement is liable for injury to the employee caused by a criminal act against the employee at the workplace if the injury would not have occurred but for the employer's prohibition. This subsection does not apply to an employee of the government of the United States or of a school district of this state.~~

~~(2) An employer may not prohibit an employee from keeping a firearm in a vehicle owned by the employee and parked at the workplace.~~

~~**Section 7.** Section 45-8-315, MCA, is amended to read:~~

~~**"45-8-315. Definition.** "Concealed weapon" means any weapon mentioned in 45-8-316, through 45-8-318, and 45-8-321 through 45-8-328 that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon, except that for purposes of 45-8-321 through 45-8-328, concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon."~~

~~**Section 8.** Section 45-8-316, MCA, is amended to read:~~

~~**"45-8-316. Carrying concealed weapons.** (1) Every~~ A ~~person who carries or bears concealed upon his~~ the ~~person, if using it to commit a criminal offense, a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a period not exceeding 6 months, or both.~~

~~(2) A person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon his~~ the ~~person, if using it to commit a criminal offense, any of the weapons described in subsection (1) shall be punished by a fine not exceeding $1,000 or imprisoned in the state prison for a period not exceeding 5 years, or both."~~

SECTION 7. SECTION 45-8-321, MCA, IS AMENDED TO READ:

"45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person

identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) subject to the provisions of subsection (6), has been convicted in any state or federal court of:

(i) a crime punishable by more than 1 year of incarceration ~~or~~; or

(ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, ~~violence, bodily or~~ serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

(6) A person, except a person referred to in subsection (1)(c)(ii), who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eligible."

SECTION 8. SECTION 45-8-328, MCA, IS AMENDED TO READ:

"45-8-328. Carrying concealed weapon in prohibited place -- penalty. (1) A person commits the offense of carrying a concealed weapon in a prohibited place if the person purposely or knowingly carries a concealed weapon in:

(a) portions of a building used for state or local government offices and related areas in the building that have been restricted;

(b) a bank, credit union, savings and loan institution, or similar institution during the institution's normal

business hours. It is not an offense under this section to carry a concealed weapon while:

(i) using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or

(ii) at or near a branch office of an institution in a mall, grocery store, or other place unless the person is inside the enclosure used for the institution's financial services or is using the institution's financial services.

(c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises~~.~~;

(d) a health care facility as defined in 50-5-101.

(2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both."

Section 9. Section 46-6-502, MCA, is amended to read:

"46-6-502. Arrest by private person. (1) A private person may arrest another when there is probable cause to believe that the person is committing or has committed an offense and the existing circumstances require the person's immediate arrest. The private person may use reasonable force to detain the arrested person. ~~Force likely to cause death or serious bodily harm may be used only under the conditions specified in 45-3-101 through 45-3-106.~~

(2) A private person making an arrest shall immediately notify the nearest available law enforcement agency or peace officer and give custody of the person arrested to the officer or agency."

NEW SECTION. **SECTION 10. JUSTIFIABLE USE OF FORCE -- BURDEN OF PROOF.** IN A CRIMINAL TRIAL, WHEN THE DEFENDANT HAS OFFERED EVIDENCE OF JUSTIFIABLE USE OF FORCE, THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THE DEFENDANT'S ACTIONS WERE NOT JUSTIFIED.

~~NEW SECTION. **Section 10. Repealer.** Section 45-8-317, MCA, is repealed.~~

NEW SECTION. **Section 11. Codification instruction.** (1) [Sections 1 through ~~5~~ 4 3] are intended to be codified as an integral part of Title 45, chapter 3, part 1, and the provisions of Title 45, chapter 3, part 1, apply to [sections 1 through ~~5~~ 4 3].

~~(2) [Section 6] is intended to be codified as an integral part of Title 46, chapter 5, part 1, and the~~

~~provisions of Title 46, chapter 5, part 1, apply to [section 6].~~

~~(3)~~(2) [Section ~~7~~ 5] is intended to be codified as an integral part of Title 46, chapter 5, part 3, and the provisions of Title 46, chapter 5, part 3, apply to [section ~~7~~ 5].

~~(4)~~(3) [Section ~~8~~ 6] is intended to be codified as an integral part of Title 70, chapter ~~4~~ 24, part ~~4~~ 1, and the provisions of Title 70, chapter ~~4~~ 24, part ~~4~~ 1, apply to [section ~~8~~ 6].

~~(5) [Section 9] is intended to be codified as an integral part of Title 39, chapter 2, and the provisions of Title 39, chapter 2, apply to [section 9].~~

(4) [SECTION 10] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 46, CHAPTER 16, PART 1, AND THE PROVISIONS OF TITLE 46, CHAPTER 16, PART 1, APPLY TO [SECTION 10].

NEW SECTION. **SECTION 12. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

- END -

MINUTES

MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON HOUSE AMENDMENTS TO HOUSE BILL 228

Call to Order: Chairman Dan McGee, on April 7, 2009 at 9:00 A.M., in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Dan McGee, Chairman (R)
Rep. Deborah Kottel, Chairman (D)
Rep. Tom Berry (R)
Sen. Larry Jent (D)
Rep. Krayton Kerns (R)
Rep. Mike Menahan (D)
Sen. Jim Shockley (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:

Executive Action: HB 228-Be Amended

00:00:04 Sen. McGee
00:00:38 Rep. Kerns
00:01:30 Rep. Kottel
00:01:48 Sen. McGee

00:02:06 **Motion**: Rep. Kerns moved that **HB 228 BE AMENDED.**
EXHIBIT(ccs76hb0228a01)

Discussion:

00:02:20 Rep Berry
00:02:40 Sen. McGee
00:02:50 Rep. Kottel
00:03:36 Rep. Jent
00:03:59 Rep. Menahan
EXHIBIT(ccs76hb0228a02)
00:04:12 Sen. McGee
00:04:41 Rep. Menahan

00:05:12 **Vote**: Motion that **HB 228 BE AMENDED** carried 6-1 by voice vote with Rep. Berry voting no.

NOTE: In lieu of motion, a majority of the committee signed the Committee Report to indicate their recommendation that the Free Conference Committee Report be adopted.

ADJOURNMENT

Adjournment: 9:06 A.M.

Pamela E. Schindler, Secretary

Additional Documents:

EXHIBIT(ccs76hb0228aad.pdf)

CONFERENCE COMMITTEE
on Senate amendments to House Bill 228
Report No. 001, April 7, 2009

Mr. President and Mr. Speaker:

We, your Conference Committee met and considered Senate amendments to **House Bill 228** (reference copy -- salmon) and recommend this Conference Committee report be adopted.

For the Senate:

Sen. Dan McGee, Chair

Sen. Jim Shockley

Sen. Larry Jent

For the House:

Rep. Mike Menahan

Rep. Deborah Kottel

Rep. Krayton Kerns

Rep. Tom Berry

Amendment Coordinator

And, recommend that **House Bill 228** (reference copy -- salmon) be amended as follows:

1. Title, line 9.
Strike: "45-8-328,"

2. Page 8, line 24 through page 9, line 10.
Strike: section 8 in its entirety
Renumber: subsequent sections

ADOPT
REJECT

Amendment # HB 228-001

HB0228001CC.sdr

3. Page 10, line 8.
Strike: "10"
Insert: "9"

4. Page 10, line 9.
Strike: "10"
Insert: "9"

- END -

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 4/7/09
BILL NO. HB228

Amendments to House Bill No. 228
Reference Copy

Requested by Senator Dan McGee

For the Senate Conference Committee

Prepared by Valencia Lane
April 6, 2009 (1:53pm)

1. Title, line 9.
Strike: "45-8-328,"

2. Page 8, line 24 through page 9, line 10.
Strike: section 8 in its entirety
Renumber: subsequent sections

3. Page 10, line 8.
Strike: "10"
Insert: "9"

4. Page 10, line 9.
Strike: "10"
Insert: "9"

- END -

SENATE JUDICIARY
EXHIBIT NO. 2
4/7/09
SB228

50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health

problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(19) "Department" means the department of public health and human services provided for in 2-15-2201.

(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(21) "Federal acts" means federal statutes for the construction of health care facilities.

(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(29) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary--A" provides outpatient and inpatient care;

(b) an "infirmary--B" provides outpatient care only.

(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(36) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(39) "Offer" means the representation by a health care facility that it can provide specific health services.

(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(47) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services,

psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(55) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis, care, or treatment of one or more of the following categories:

(i) patients with a cardiac condition;

(ii) patients with an orthopedic condition;

(iii) patients undergoing a surgical procedure; or

(iv) patients treated for cancer-related diseases and receiving oncology services.

(b) For purposes of this subsection (55), a specialty hospital may provide other services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law if the care encompasses 35% or less of the hospital services.

(c) The term "specialty hospital" does not include:

(i) psychiatric hospitals;

(ii) rehabilitation hospitals;

(iii) children's hospitals;

(iv) long-term care hospitals; or

(v) critical access hospitals.

(56) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(57) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient.

History: Ap. p. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; Ap. p. Sec. 159, Ch. 197, L. 1967; amd. Sec. 1, Ch. 290, L. 1969; amd. Sec. 1, Ch. 197, L. 1971; amd. Sec. 1, Ch. 448, L. 1973; amd. Sec. 1, Ch. 150, L. 1974; amd. Sec. 1, Ch. 447, L. 1975; amd. Sec. 22, Ch. 187, L. 1977; R.C.M. 1947, 69-4102(1), 69-5201; amd. Sec. 1, Ch. 347, L. 1979; amd. Sec. 1, Ch. 432, L. 1981; amd. Sec. 1, Ch. 433, L. 1981; amd. Sec. 1, Ch. 324, L. 1983; amd. Secs. 1, 13, Ch. 329, L. 1983; amd. Sec. 7, Ch. 597, L. 1983; amd. Sec. 1, Ch. 641, L. 1983; amd. Sec. 9, Ch. 713, L. 1985; amd. Sec. 108, Ch. 370, L. 1987; amd. Sec. 1, Ch. 450, L. 1987; amd. Sec. 1, Ch. 477, L. 1987; amd. Sec. 13, Ch. 330, L. 1989; amd. Sec. 1, Ch. 616, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 764, L. 1991; amd. Sec. 1, Ch. 151, L. 1993; amd. Sec. 1, Ch. 590, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 1, Ch. 366, L. 1995; amd. Sec. 2, Ch. 398, L. 1995; amd. Sec. 92, Ch. 418, L. 1995; amd. Sec. 250, Ch. 546, L. 1995; amd. Sec. 207, Ch. 42, L. 1997; amd. Sec. 3, Ch. 93, L. 1997; amd. Sec. 1, Ch. 99, L. 1997; amd. Sec. 2, Ch. 171, L. 1997; amd. Sec. 3, Ch. 188, L. 1997; amd. Sec. 4, Ch. 98, L. 1999; amd. Sec. 1, Ch. 133, L. 1999; amd. Sec. 4, Ch. 192, L. 2001; amd. Sec. 1, Ch. 366, L. 2001; amd. Sec. 2, Ch. 54, L. 2003; amd. Sec. 99, Ch. 114, L. 2003; amd. Sec. 1, Ch. 348, L. 2003; amd. Sec. 1, Ch. 401, L. 2003; amd. Sec. 1, Ch. 403, L. 2003; amd. Sec. 1, Ch. 365, L. 2005; amd. Sec. 23, Ch. 519, L. 2005; amd. Sec. 1, Ch. 466, L. 2007.

BUSINESS REPORT

MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION

SENATE CONFERENCE COMMITTEE

Date: Tuesday, April 7, 2009 **Time:** 9:00 am
Place: Capitol **Room:** 303

BILLS and RESOLUTIONS HEARD:

EXECUTIVE ACTION TAKEN:

HB 228

COMMENTS:

SEN. Dan McGee , Chairman

Montana State Senate
Roll Call

CONFERENCE COMMITTEE

Date 4/2/09 **HB/SB #** HB228

NAME	PRESENT	ABSENT/EXCUSED
Sen. McLee	X	
Sen. Jent	X	
Sen. Shockley	X	
Rep. Cobb	X	
Rep. Berry	X	
Rep. Menahan	X	
Rep. Lewis	X	

MONTANA STATE SENATE

Montana State Senate
Roll Call Vote

CONFERENCE COMMITTEE

Date 4/7/09 HB/SB # HB228

NAME	YES	NO
Sen. McGee	✓	
Sen. Jent	✓	
Sen. Shockley	✓	
Rep. Kottel	✓	
Rep. Kerns	✓	
Rep. Menahan	✓	
Rep. Berry	.	✓

6/1

House 3/1

Sen. 3/0

AN ACT PRESERVING AND CLARIFYING LAWS RELATING TO THE RIGHT OF SELF-DEFENSE AND THE RIGHT TO BEAR ARMS; AMENDING SECTIONS 45-3-103, 45-8-321, AND 46-6-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature declares that:

(1) the right of Montanans to defend their lives and liberties, as provided in Article II, section 3, of the Montana Constitution, and their right to keep or bear arms in defense of their homes, persons, and property, as provided in Article II, section 12, of the Montana Constitution, are fundamental and may not be called into question;

(2) the use of firearms for self-defense is recognized within the right reserved to the individual people of Montana in Article II, section 12, of the Montana Constitution;

(3) self-defense is a natural right under section 1-2-104, MCA, and is included in sections 49-1-101 and 49-1-103, MCA;

(4) the lawful use of firearms for self-defense is not a crime or an offense against the people of the state;

(5) in a criminal case in which self-defense is asserted, the burden of proof is as provided in [section 10];

(6) in self-defense, the use of justifiable force discourages violent crime and prevents victimization; and

(7) the purpose of [sections 1 through 3] is to clarify and secure the ability of the people to protect themselves.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. No duty to summon help or flee. Except as provided in 45-3-105, a person who is lawfully in a place or location and who is threatened with bodily injury or loss of life has no duty to retreat from a threat or summon law enforcement assistance prior to using force. The provisions of this section apply to a person offering evidence of justifiable use of force under 45-3-102, 45-3-103, or 45-3-104.

Section 2. Openly carrying weapon -- display -- exemption. (1) Any person who is not otherwise prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another person the fact that the person has a weapon.

(2) If a person reasonably believes that the person or another person is threatened with bodily harm, the person may warn or threaten the use of force, including deadly force, against the aggressor, including drawing or presenting a weapon.

(3) This section does not limit the authority of the board of regents or other postsecondary institutions to regulate the carrying of weapons, as defined in 45-8-361(5)(b), on their campuses.

Section 3. Investigation of alleged offense involving claim of justifiable use of force. When an investigation is conducted by a peace officer of an incident that appears to have or is alleged to have involved justifiable use of force, the investigation must be conducted so as to disclose all evidence, including testimony concerning the alleged offense and that might support the apparent or alleged justifiable use of force.

Section 4. Section 45-3-103, MCA, is amended to read:

"45-3-103. Use of force in defense of occupied structure. (1) A person is justified in the use of force or threat to use force against another when and to the extent that ~~he~~ the person reasonably believes that ~~such conduct~~ the use of force is necessary to prevent or terminate ~~such~~ the other's unlawful entry into or attack upon an occupied structure. ~~However, he~~

(2) A person justified in the use of force pursuant to subsection (1) is justified in the use of force likely to cause death or serious bodily harm only if:

~~(1)~~(a) the entry is made or attempted ~~in violent, riotous, or tumultuous manner~~ and ~~he~~ the person reasonably believes that ~~such~~ the force is necessary to prevent an assault upon ~~or offer of personal violence to him~~ the person or another then in the occupied structure; or

~~(2)~~(b) ~~he~~ the person reasonably believes that ~~such~~ the force is necessary to prevent the commission of a forcible felony in the occupied structure."

Section 5. Firearm not to be destroyed. If a firearm possessed by a law enforcement agency was not purchased by the agency for agency use, if it is legal for a private person to own and possess the firearm, and

if the legal owner cannot be determined by the agency, the agency may not destroy the firearm and shall sell the firearm to a licensed dealer. The proceeds of the sale must be deposited in the general fund of the governmental entity of which the agency is a part.

Section 6. Landlords and tenants -- no firearm prohibition allowed. A landlord or operator of a hotel or motel may not, by contract or otherwise, prevent a tenant or a guest of a tenant from possessing on the premises a firearm that it is legal for the tenant or guest to possess. A landlord or operator of a hotel or motel may prohibit the discharge of a firearm on the premises except in self-defense.

Section 7. Section 45-8-321, MCA, is amended to read:

"45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) subject to the provisions of subsection (6), has been convicted in any state or federal court of:

(i) a crime punishable by more than 1 year of incarceration ~~or~~; or

(ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, ~~violence, bodily or~~ serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation,

suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in

subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

(6) A person, except a person referred to in subsection (1)(c)(ii), who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eligible."

Section 8. Section 46-6-502, MCA, is amended to read:

"46-6-502. Arrest by private person. (1) A private person may arrest another when there is probable cause to believe that the person is committing or has committed an offense and the existing circumstances require the person's immediate arrest. The private person may use reasonable force to detain the arrested person.

(2) A private person making an arrest shall immediately notify the nearest available law enforcement agency or peace officer and give custody of the person arrested to the officer or agency."

Section 9. Justifiable use of force -- burden of proof. In a criminal trial, when the defendant has offered evidence of justifiable use of force, the state has the burden of proving beyond a reasonable doubt that the defendant's actions were not justified.

Section 10. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 45, chapter 3, part 1, and the provisions of Title 45, chapter 3, part 1, apply to [sections 1 through 3].

(2) [Section 5] is intended to be codified as an integral part of Title 46, chapter 5, part 3, and the provisions of Title 46, chapter 5, part 3, apply to [section 5].

(3) [Section 6] is intended to be codified as an integral part of Title 70, chapter 24, part 1, and the provisions of Title 70, chapter 24, part 1, apply to [section 6].

(4) [Section 9] is intended to be codified as an integral part of Title 46, chapter 16, part 1, and the

provisions of Title 46, chapter 16, part 1, apply to [section 9].

Section 11. Effective date. [This act] is effective on passage and approval.

- END -